116. Assessing the totality of the record and circumstances presented, we find that the commenters' concerns represent isolated instances of errors that may generally occur with high-volume carrier-to-carrier commercial billing rather than systemic problems, and thus we find that the allegations about billing raised in this record do not warrant a finding of checklist noncompliance.[470] We are mindful of our precedent, which makes clear that the checklist does not require perfect billing systems or other supporting processes.[471] It is inevitable, particularly considering the complexity of billing systems and volume of transactions handled in the relevant states, that errors and carrier-to-carrier disputes will occur. The question before us, however, is whether SBC's processes are adequate to ensure that competitors have a meaningful opportunity to enter the market and pose a competitive alternative to SBC. As we found in the *SBC Michigan II Order*, we find here that SBC's billing processes do provide competitors such an opportunity. We begin our analysis with an overview of SBC's wholesale billing systems and processes, including successful third-party testing and commercial billing performance of those systems. We then address the specific areas of concern raised by commenters.

(a) Overview

117. SBC uses the same wholesale billing systems throughout the five-state region. Specifically, SBC indicates that it uses the Ameritech Customer Information System (ACIS) provisioning database to bill residential and business customers for retail products.[472] SBC's Resale Billing System (RBS) uses information extracted from the ACIS databases to generate resale bills for competitive LECs that are reselling services.[473] SBC's Carrier Access Billing System (CABS) generates bills for competitive LECs that purchase UNE and interconnection products including UNE loops, UNE-P, local transport and interconnection trunks.[474]

118. In August 2001, SBC started migrating its billing of UNE-P switch ports from RBS to CABS in order to improve wholesale billing of UNE-P and allow competitive LECs to receive a single UNE-P bill.[475] In October 2001, it completed this conversion process and

(Continued from previous page)
Michigan II proceeding) (VarTec *SBC Michigan II* July 14 *Ex Parte* Letter)). VarTec indicated that it operates in all five states in the SBC Midwest region. *Id.* at 1.

[470] As the D.C. Circuit recently held, weighing conflicting evidence is "a matter peculiarly within the province of the Commission." *Z-Tel Communications, Inc. v. FCC*, No. 01-1461, slip op. at 17 (D.C. Cir. July 1, 2003).

[471] *See SBC California Order*, 17 FCC Rcd at 25697, para. 90; *Verizon New Jersey* Order, 17 FCC Rcd at 12336-37, para. 126; *Verizon Pennsylvania Order*, 16 FCC Rcd at 17433-37, paras. 25-29.

[472] SBC Brown/Cottrell/Flynn Aff. at para. 9.

[473] SBC Brown/Cottrell/Flynn Aff. at para. 10.

[474] SBC Brown/Cottrell/Flynn Aff. at para. 11.

[475] SBC Brown/Cottrell/Flynn Aff. at para. 44. SBC states that prior to the conversion, competitive LECs received two separate bills, one from RBS for the UNE-P switch port, and one from CABS for the UNE-P loop. SBC Brown/Cottrell/Flynn Aff. at para. 44.

consolidated billing for UNE-P charges into CABS.[476] SBC explains, however, that during the migration to CABS, certain programming flaws and other errors caused some of the migrated UNE-P data to be placed on CABS customer service records (CSR) incorrectly, resulting in a mismatch between ACIS and CABS records.[477] When service order activity was held from billing during the August-October 2001 migration, it created an unexpectedly large backlog of service orders that still required posting to CABS.[478] This backlog of held service order activity was released for mechanical posting to CABS in December, but existing errors resulted in the fallout of an unexpectedly large number of service orders for manual handling by the Local Service Center (LSC).[479] SBC states that the manual handling of these service orders led to a "cascade" effect in terms of additional errors, but SBC was able to make several improvements to its mechanized and manual posting systems and processes to reduce the number of backlogged service orders to approximately 100,000 as of September 2002.[480]

119. SBC states that certain backlogged service orders could not efficiently be posted to CABS following the conversion due to the lack of synchronization between the ACIS and CABS databases.[481] SBC submits, however, that the CABS database errors represented by these remaining service orders, and any other underlying errors stemming from the initial CABS conversion, were ultimately resolved through the ACIS/CABS database reconciliation that took place in January 2003.[482] For the reasons stated in the *SBC Michigan II* Order, we conclude that

[476] SBC Application at 82; SBC Brown/Cottrell/Flynn Aff. at para. 45.

[477] SBC Brown/Cottrell/Flynn Aff. at paras. 46-47, 57.

[478] SBC Brown/Cottrell/Flynn Aff. at para. 48.

[479] SBC Brown/Cottrell/Flynn Aff. at para. 49. SBC states that approximately 250,000 service orders fell out from mechanical posting. SBC Brown/Cottrell/Flynn Aff. at para. 49.

[480] SBC Brown/Cottrell/Flynn Aff. at paras. 50-57. SBC submits that these improvements have helped to solve the problem of low flow-through rates for mechanized posting of billing service orders and have significantly reduced the potential for error from manual handling, thus helping to ensure that the ACIS and CABS databases remain in sync. *Id.* at para. 87. SBC states that its data, which has now been validated by E&Y, shows that SBC's mechanized posting of billing service orders improved from 71% in March 2002 to 96% in March 2003. *Id.* SBC also made improvements to its manual handling of service order fallout by developing the Informix database system to mechanize certain aspects of the process. *Id.* at paras. 53-57.

[481] SBC Brown/Cottrell/Flynn Aff. at para. 57.

[482] SBC Brown/Cottrell/Flynn Aff. at para. 57. SBC states that during the reconciliation, special programs analyzed differences between the ACIS and CABS records on a circuit-by-circuit basis and updated the CABS CSR to match the ACIS record. SBC posted debits and credits to the next competitive LEC wholesale bills following the reconciliation based on the results of circuits that were added to, and deleted from, the CABS billing records. *Id.* at para. 58. Ernst & Young (E&Y) verified that SBC properly performed the reconciliation of the ACIS and CABS databases and correctly provided competitive LECs with appropriate debits and credits. SBC Application at 84; SBC Brown/Cottrell/Flynn Aff. at paras. 32-41, Attach. F (Affidavit of Brian Horst, WC Docket No. 03-138 (filed June 19, 2003) (Michigan Bell Horst Supplemental Aff.) Attach. A at 1, Attach B at 4-8). We discuss the billing reconciliation in further detail in our recent order granting SBC 271 authority in Michigan. *See SBC Michigan II Order* at paras. 104-108.

SBC has sufficiently remedied the problems associated with the CABS migration.[483]

120. SBC also demonstrates that it has processes in place to ensure that rate changes are implemented in a timely and accurate manner.[484] BearingPoint testing verified SBC's timely and accurate posting of rate table updates.[485] SBC's processes require that assigned managers assume responsibility for the development of the price schedules for each interconnection agreement, and management personnel work together with regulatory personnel to identify potential rate impacts of state commission orders.[486] SBC also routinely audits the rates for a sample of the most commonly ordered products on a monthly basis to ensure that the correct rates are being applied.[487] Even though SBC recently identified errors in certain loop zone rates in its rate tables and in its classification of business and residential loops,[488] SBC had corrected these errors by June 2003, as validated by E&Y.[489]

121. SBC also shows that it provides auditable bills. SBC indicates that its processes allow competitive LECs to receive wholesale CABS bills through electronic media Billing Data Tapes (BDT) that follow the industry standard Billing Output Specification (BOS) guidelines, in paper format, or by both means.[490] These processes also allow competitive LECs to receive RBS bills via Electronic Data Interchange (EDI811), in paper format, or by both means.[491] SBC provides additional detail for competitive LECs that require more detail than the summary level information provided on RBS paper bills, with its Ameritech Electronic Billing Service (AEBS 450).[492] The CABS UNE bills and RBS data provided via AEBS 450 also provide sufficient detail to allow competing carriers to audit the bills and identify any disputed charges, including the universal service order code (USOC) for the particular charge, and a description of the product or service.[493]

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[483] *SBC Michigan II Order* at paras. 104-108.

[484] SBC Brown/Cottrell/Flynn Aff. at paras. 88-93; SBC Brown/Cottrell/Flynn Reply Aff. at paras. 81, 85-88.

[485] SBC Brown/Cottrell/Flynn Aff. at para. 88.

[486] SBC Brown/Cottrell/Flynn Aff. at paras. 90, 93.

[487] SBC Brown/Cottrell/Flynn Reply Aff. at para. 81.

[488] SBC Brown/Cottrell/Flynn Aff. at paras. 105-106, 119-120.

[489] SBC Brown/Cottrell/Flynn Aff. at paras. 105-126. Specifically, these problems were corrected by SBC and validated by E&Y during March through June 2003. *Id.*

[490] SBC Brown/Cottrell/Flynn Aff. at para. 19.

[491] SBC Brown/Cottrell/Flynn Aff. at para. 20.

[492] SBC Brown/Cottrell/Flynn Aff. at para. 21.

[493] SBC Brown/Cottrell/Flynn Aff. at para. 22-23. A USOC is a code associated with a particular SBC product or service.

122. SBC also demonstrates that it offers effective procedures to resolve wholesale billing disputes. Specifically, SBC states that its "CLEC Handbook" explains the procedures that its wholesale customers should follow to resolve billing disputes.[494] According to these procedures, the local service center (LSC) is designated as the initial point of contact for all non-collocation and non-LEC Services Billing (LSB)[495] wholesale billing claims and disputes, and is tasked with reaching a final resolution of claims within 30 days.[496] SBC policy specifies that when a claim cannot be processed within 30 days, the competitive LEC will be notified by telephone or e-mail and periodically updated on the status until it is resolved.[497] When a claim or adjustment is resolved, SBC issues a resolution letter.[498] Claims or adjustments that are approved will have the adjustment applied to the next account billing cycle, while those denied will be provided with an explanation of the denial.[499] In addition, SBC states that it has fully complied with modified improvement plans filed in Illinois, Indiana, Ohio and Wisconsin regarding billing auditability and dispute resolution.[500] We thus find that SBC currently offers effective procedures to resolve wholesale billing disputes, and note that SBC is taking steps to address billing issues as they arise. SBC indicates that it has revised the documentation for use by its LSC employees in resolving claims, and is engaged in an ongoing dialogue with competitive LECs to address billing dispute resolution issues through a sub-committee of the CLEC User Forum.[501] SBC states that it has resolved 38 of the 56 billing issues raised since the creation of the billing sub-committee on February 19, 2003. We note that the Wisconsin Commission also has initiated a proceeding to evaluate SBC's billing systems, which will allow competitive LECs to resolve any billing problems they experience in the future.[502]

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[494] SBC Brown/Cottrell/Flynn Aff. at para. 134.

[495] SBC indicates that LEC Services Billing bills for certain miscellaneous services including certain operator services and directory assistance. SBC Brown/Cottrell/Flynn Aff. at para. 134 n.131.

[496] SBC Brown/Cottrell/Flynn Aff. at para. 134-35. SBC indicates that the LSC monitors claims on a case-by-case basis, and when quality reviews are conducted, the managers note whether a claim was completed within 30 days, and if not, whether the appropriate communications were made to the competitive LEC. SBC Brown/Cottrell/Flynn Reply Aff. at para. 102.

[497] SBC Brown/Cottrell/Flynn Aff. at para. 135.

[498] *Id.*

[499] *Id.* SBC states that in accordance with its dispute resolution process, competitive LECs should receive an explanation that includes information indicating how the Local Service Center came to the resolution of denial including, for example, citations to documents or resources used in making the determination. SBC Brown/Cottrell/Flynn Reply Aff. at paras. 103-104.

[500] SBC Brown/Cottrell/Flynn Aff. at paras. 137-38.

[501] *Id.*

[502] SBC Brown/Cottrell/Flynn Reply Aff. at para. 93. We are not persuaded by TDS Metrocom's contention that SBC's application should not be granted unless a regional billing collaborative like the one initiated in Wisconsin is established in other states. TDS Metrocom Comments at 21-23. A regional billing collaborative has never been (continued....)

123. With respect to the commercial performance of SBC's billing systems, we find that SBC generally met the relevant parity and benchmark standards regarding the timeliness and accuracy of its wholesale billing.[503] SBC also satisfied 100 percent of BearingPoint's tests of its wholesale billing systems and processes.[504] We thus conclude that SBC satisfies its evidentiary burden of demonstrating that its wholesale bills give competitive LECs a meaningful opportunity to compete.

124. Although many competing carriers commented on the quality of SBC's billing systems, we note that many of the issues raised are identical to those raised in the *SBC Michigan II* proceeding.[505] To the extent that the issues raised in this proceeding are the same, we incorporate and reference the *SBC Michigan II* proceeding. As we have stated previously, "to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues."[506] However, to the extent carriers raise new issues or cite new evidence concerning SBC's billing systems that was not considered in the *SBC Michigan II* proceeding, we address them below.

(b) Specific Billing Disputes

125. Although commenters reference several specific SBC billing mistakes and other disputes between them and SBC, as discussed below, we do not find that these claims warrant a finding of checklist noncompliance. Commenters claim that SBC's bills are inaccurate because of specific instances of improper charges for products or services, or the application of incorrect

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required to demonstrate checklist compliance. SBC Brown/Cottrell/Flynn Reply Aff. at para. 143. Moreover, because SBC's systems appear to be regional, we expect that any improvements made as a result of the Wisconsin collaborative will be executed region-wide.

[503] *See* PM 14 (Billing Accuracy); PM 15 (% Accurate & Complete Formatted Mechanized Bills); PM 18 (Billing Timeliness (Wholesale Bill)); *see also* generally PM 17 (Billing Completeness); *but see* PM 17-04 in Illinois (Billing Completeness – Resale) (indicating slight misses in March, April and June, but with competitive LEC rates of 97.67%, 97.46%, and 97.53%).

[504] BearingPoint found that SBC met the relevant benchmarks regarding the accuracy of its wholesale bills, the timeliness of delivering its wholesale bills, and the timeliness of posting resale and UNE-loop service order activity to the billing systems. *See* SBC Application, App. M, Tab 161, BearingPoint Illinois Bell OSS Evaluation Project Report, at 9, 775-787 (May 1, 2003); SBC Application, App. M, Tab 165, BearingPoint Indiana Bell Interim OSS and Performance Measurement Status Report, at 10, 1005-1017 (May 12, 2003); SBC Application, App. C-OH, Tab 126, BearingPoint Ohio Interim OSS Status Report, at 10, 803-816 (May 23, 2003); SBC Application, App. M, Tab 117, BearingPoint Wisconsin Bell OSS Evaluation Project Interim Report, at 10, 1029-1041 (Jan. 15, 2003).

[505] These issues include: (1) problems associated with the migration to CABS; (2) records mismatches causing competitive LECs to be billed for incorrect customers; (3) SBC's processes related to wholesale billing; (4) SBC's ability to provide auditable wholesale bills; (5) issues regarding SBC's billing reconciliation; and (6) restatement of PM 17. These issues were all thoroughly addressed in the *SBC Michigan II Order*. *See SBC Michigan II Order*, at paras. 99-108.

[506] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6254, para. 35.

rates.[507] We find that SBC has demonstrated that the vast majority of these billing disputes are historical problems that SBC has resolved, or are disputes that SBC is addressing on a carrier-to-carrier basis.[508] We also note that a number of commenters' allegations are largely anecdotal in nature and lack sufficient supporting evidence. For example, Access One, CIMCO , and Forte all argue generally that they have never received an accurate bill from SBC, but they fail to provide evidence to sufficiently support their claims.[509] Similarly, the National Alternative Local Exchange Carrier Association (NALA) presents a number of general complaints regarding SBC's bills, but fails to provide specific evidence regarding those complaints.[510] Accordingly, we do not find that these claims are sufficient to overcome SBC's affirmative evidence that its billing systems meet the Commission's requirements.[511]

126. ACN Group claims that SBC billed Mpower incorrectly for local termination traffic at the local rate.[512] SBC states that it acknowledged that Mpower's contract language for local traffic is bill and keep and therefore adjusted the rate tables on April 15, 2003. SBC submits that this issue was related to a manual error and that all credit adjustments related to the incident have been processed.[513] Based on the evidence in the record, we are not persuaded that this instance represents a systemic flaw in SBC's billing that impedes a competitive LEC's opportunity to compete. We therefore find that this issue does not demonstrate checklist

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[507] AT&T Comments at 31-35; MCI Comments, Attach. Tab 2, Declaration of Sherry Lichtenberg (in WC Docket No. 03-138) at paras. 12-13, 33-45 (MCI Lichtenberg *SBC Michigan II* Decl.); TDS Metrocom Comments at 11, 14-16.

[508] *See SBC Michigan II Order* at para. 110.

[509] Access One Comments at 2; CIMCO Comments at 7; Forte Comments at 11.

[510] Letter from Norman D. Mason, Chairman of the National Alternative Local Exchange Carrier Association (NALA), to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 2 (filed September 11, 2003)(NALA Sept. 11 *Ex Parte* Letter). Specifically, NALA argues that SBC denies billing disputes without providing a reason and never presents billing details. However, NALA fails to provide sufficient evidence to support these claims and fails to respond to SBC's evidence that it does have a reasonable billing dispute process and does provide sufficient call detail. *See* SBC Brown/Cottrell/Fynn Aff. at paras. 22-23, 134-37. Moreover, NALA also makes reference to an unsupported claim it made in the *SBC Michigan II* proceeding regarding the bills it receives for end user calls that should allegedly be blocked. As we found in the *SBC Michigan II Order*, NALA has provided no specific evidence upon which we could conclude that SBC is allowing calls to proceed that should be blocked; and any dispute over who should bear the financial responsibility for such calls involves interpretation of the parties' interconnection agreement; and such a dispute is more appropriately addressed outside of the context of this section 271 proceeding. *See SBC Michigan II Order* at para. 154.

[511] *Qwest Nine State Order*, 17 FCC Rcd at 26511, para. 378 n.1423 ("When considering commenters' filings in opposition to the BOC's application, we look for evidence that the BOC's policies, procedures, or capabilities preclude it from satisfying the requirements of the checklist item. Mere unsupported evidence in opposition will not suffice.") (quoting *SWBT Texas Order*, 15 FCC Rcd at 18375, para. 50).

[512] ACN Group Comments at 6.

[513] SBC Brown/Cottrell/Flynn Reply Aff. at para. 130.

noncompliance.

127. ACN Group and NTD also challenge SBC's dispute resolution process, arguing that it can take several months – or more – for disputes to be resolved.[514] They further argue that such delays lead to problems with extensive backbilling that harm competitive LEC financial plans.[515] Other commenters similarly claim that such delays tie up revenues if the carriers' interconnection agreements require them to pay the disputed amounts or place them in escrow while the disputes are pending.[516] In addition, commenters claim that SBC provides insufficient explanation of its billing adjustments or its reasons for denying a dispute.[517] We do not find, however, that these claims warrant a finding of checklist noncompliance in light of SBC's demonstration of its dispute resolution process. As we found in the *SBC Michigan II Order*, commenters' claims regarding dispute resolution delays and backbilling do not overcome SBC's affirmative showing based on evidence of a functioning dispute resolution process.[518] SBC has again provided a full description of the process it follows to resolve billing disputes, and we find that commenters have failed to counter this showing with specific instances that indicate that this process is not adhered to by SBC, or is otherwise insufficient to allow competitive LECs a meaningful opportunity to compete.

128. MCI argues that while SBC agreed to make payments to resolve a number of billing issues, SBC has refused to pay interest at the rate required by the interconnection agreement.[519] SBC states that it has already completed the process of calculating the interest in this instance, and will be working with MCI to identify the appropriate MCI billing account number to credit.[520] We find that MCI's claim in this instance represents a factual dispute over the terms of their interconnection agreement that appears to be resolved. In the *SBC Michigan II Order*, we found that many of the billing disputes raised had been resolved or were being addressed on a carrier-to-carrier basis.[521] In this instance, we similarly find that MCI's claim does not reflect a systemic problem with SBC's billing systems. MCI also argues that SBC has failed to true-up certain UNE rates in Wisconsin, and states that it has raised this issue in the

[514] ACN Group Comments at 6-7 (arguing that the dispute resolution process is flawed, and that the speed with which SBC makes a commitment to resolve billing disputes should be investigated); NTD Comments at 8-9; *see also* TDS Metrocom Comments at 18.

[515] ACN Group Comments at 8; NTD Comments at 3-4, 6-8.

[516] NALA Sept. 11 *Ex Parte* Letter at 3; TDS Metrocom Comments at 9.

[517] NALA Sept. 11 *Ex Parte* Letter at 2; TDS Metrocom Comments at 19-20.

[518] *SBC Michigan II Order* at paras. 109-110.

[519] MCI Reply at 7.

[520] SBC Sept. 12 *Ex Parte* Letter at Attach. A, p. 7.

[521] *SBC Michigan II Order* at para. 110.

Wisconsin billing proceeding.[522] We find that this claim fails to indicate any problem with SBC's billing systems, and note that according to MCI, SBC recently stated that the true-up will be addressed shortly.[523] Accordingly, we reject MCI's arguments as they pertain to SBC's checklist compliance, and note that these issues are more appropriately raised as complaints before the state commission.

129. Mpower claims that SBC improperly assessed trip charges on approximately 14,000 trouble tickets in Illinois from April 2002 through August 2003, and that this is an indication of SBC's inability to issue accurate wholesale bills.[524] According to Mpower, SBC agreed to investigate these trip charges using a sample of 75 trouble tickets and agreed to apply the results from that sample to the entire group of disputed trouble tickets.[525] However, Mpower alleges that SBC broke its agreement when the investigation determined that 70 of the 75 sample trouble tickets were billed to Mpower incorrectly.[526] Mpower states that, as of September 22, 2003, approximately $1.2 million associated with SBC's billing of trip charges in Illinois remains in dispute.[527] SBC responds that the sample of 75 tickets that Mpower references was largely comprised of trouble tickets that should have been excluded under the terms of SBC and Mpower's confidential agreement.[528] SBC also submits that two prior samples the parties tried to use confirmed the accuracy of SBC's trouble ticket processes, but were rejected by Mpower.[529] SBC indicates that during the week of September 15 it again offered to try to work with Mpower to select a sample that would be representative of the timeframe encompassing their dispute and that would not include trouble tickets subject to a prior settlement.[530] Based on the evidence in record, we are not persuaded that Mpower's claim indicates a systemic problem with SBC's

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[522] MCI Reply at 6.

[523] *See Id.*

[524] *See* Letter from Ross A. Buntrock, Counsel for Mpower, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 1 (filed September 16, 2003)(Mpower Sept. 16 *Ex Parte* Letter); *see also* Letter from Ross A. Buntrock, Counsel for Mpower, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 1 (filed September 22, 2003)(Mpower Sept. 22 *Ex Parte* Letter); Letter from Ross A. Buntrock, Counsel for Mpower, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 1-5 (filed September 24, 2003)(Mpower Sept. 24 *Ex Parte* Letter). A trip charge is a charge assessed on a competitive LEC for SBC performing maintenance and repair on a particular circuit.

[525] Mpower Sept. 16 *Ex Parte* Letter at 2. Mpower states that the results of this testing indicated that 70 out of the 75 trouble tickets examined, or 93%, were billed incorrectly. *Id.* at 2-3.

[526] Mpower Sept. 16 *Ex Parte* Letter at 2-3.

[527] Mpower Sept. 22 *Ex Parte* Letter, Attach. A at 1.

[528] SBC Sept. 22 *Ex Parte* Letter, Attach. A at 1.

[529] *Id.*

[530] SBC Oct. 2 *Ex Parte* Letter, Attach. at 3.

billing systems. We agree with SBC that Mpower's claim represents a factual dispute that can more appropriately be handled through carrier-to-carrier billing negotiations.[531] In addition, we note that SBC employs the same billing system in Illinois that we recently approved in the *SBC Michigan II Order*, and that parties to this proceeding, other than Mpower, have not raised this trip charge issue to indicate a systemic problem with SBC's billing. We further note that any remaining dispute regarding the number of trouble tickets with improper trip charges, or the parties' adherence to any agreement, may also be raised by either party as a complaint before the state commission or an appropriate court. Accordingly, we reject Mpower's claims as they pertain to SBC's checklist compliance.

130. NTD argues that SBC's billing problems led to the disconnection of NTD services, and NTD gives reference to an instance on March 5, 2003 when SBC disconnected NTD's nine largest customers, allegedly without warning.[532] SBC responds however that the disconnection in this instance was for non-payment of access services.[533] SBC further explains that NTD was notified and given sufficient time to make payment before the disconnection, and indicates that it had attempted to negotiate access payment arrangements with NTD without success.[534] Based on the evidence in the record, we are not persuaded that the discontinuance of NTD's services resulted from a flaw in SBC's billing systems, and thus we do not find that this instance justifies a finding of checklist noncompliance.

131. TDS Metrocom references a specific dispute regarding improper charges for joint SONET facilities, and argues that even when SBC acknowledges an error, it is sometimes slow to fix the underlying problems and issue proper credits.[535] SBC states, however, that in October 2002 it updated the Trunk Inventory Record Keeping System (TIRKS) database[536] that led to the erroneous billing, and provided the vast majority of credits to TDS Metrocom by May 2003.[537] We thus find that the specific dispute raised by TDS Metrocom in this instance is being resolved

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[531] SBC Sept. 22 *Ex Parte* Letter, Attach. A at 1.

[532] NTD Comments at 4. NTD also claims that SBC provides it with inaccurate bills and frequently issues backbills. NTD Comments at 6-8. However, we find that NTD did not provide the Commission with sufficient specificity to conclude that these allegations rise to a level of checklist noncompliance. Accordingly, we reject NTD's claims.

[533] SBC Brown/Cottrell/Flynn Reply Aff. at para. 133.

[534] SBC Brown/Cottrell/Flynn Reply Aff. at para. 133.

[535] TDS Metrocom Comments at 13.

[536] SBC states that as a result of the TIRKS error, it was not able to determine which circuits were joint circuits and not subject to charges under its agreement with TDS, but that this problem was with the TIRKS database and thus does not raise issues with SBC's billing OSS. SBC Brown/Cottrell/Flynn Aff. at para. 175.

[537] SBC Brown/Cottrell/Flynn Aff. at para. 175. SBC notes, however, that since that time TDS Metrocom has identified one additional SONET node that was misbilled, and that SBC is in the process of crediting the account. *Id.*

by SBC on a carrier-to-carrier basis. TDS Metrocom further complains that the scope of BearingPoint's testing was inadequate to identify certain problems it experienced.[538] As in the *SBC Michigan II Order*, we reject TDS Metrocom's complaint that the scope of BearingPoint's testing was inadequate to identify certain problems it experienced.[539] We also note that TDS Metrocom has raised a variety of small billing claims against SBC.[540] We find that TDS Metrocom's claims have either been corrected or are being handled on a carrier-to-carrier basis, and that they fail to indicate checklist noncompliance.[541] As in the *SBC Michigan II Order*, we also find that SBC's evidence that it addresses billing problems as they arise is sufficient to respond to TDS Metrocom's isolated billing allegations.[542]

132. Z-Tel argues that problems persist with SBC's billing because SBC fails to update its underlying billing system to correct known errors, and claims that SBC consistently misbills for UNEs.[543] SBC indicates that the LSC Billing Claims process corrects inaccuracies and makes adjustments prior to notifying the competitive LEC that the claim has been resolved. SBC further states that if a competitive LEC believes that any issues are ongoing, they should be worked through management in the LSC in accordance with the escalation guidelines posted on "CLEC Online." Based on the evidence in record, we are not persuaded by Z-Tel's claims that SBC's billing systems and processes are systemically flawed.

133. After a review of SBC's performance during the relevant period, as we concluded in the *SBC Michigan II* proceeding, we find that SBC has produced sufficient evidence that its billing systems and processes allow competitive LECs a meaningful opportunity to compete. We note that the Department of Justice has mentioned that competitive LECs allege a number of problems with their wholesale bills that rise to a great enough level to raise a genuine issue, and that the Department of Justice was therefore unable to support SBC's application based on the record.[544] Notably, however, the Department of Justice does not contend, nor put forward any additional evidence to suggest that SBC' billing system is systemically flawed. The Department of Justice also acknowledges that competitive LECs "could have more fully demonstrated the

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[538] TDS Metrocom Comments at 6-7 (referring to Letter from Mark Jenn, Manager – CLEC Federal Affairs, TDS Metrocom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-138 at 1-4 (filed July 30, 2003) (TDS Metrocom July 30 *Ex Parte* Letter)).

[539] *SBC Michigan II Order* at para. 111.

[540] For example, TDS Metrocom claims that SBC charged it improper loop rate zone classifications, misclassified lines between business and residential categories, and charged incorrect rates for transit traffic. TDS Metrocom Comments at 13-17.

[541] We note that SBC has indicated that it has already resolved these disputes, and issued credits where appropriate. SBC Brown/Cottrell/Flynn Reply Aff. at paras. 139-42. *See also SBC Michigan II Order* at para. 109.

[542] *SBC Michigan II Order* at para. 112.

[543] Z-Tel Comments at 10-11.

[544] Department of Justice Evaluation at 12.

extent to which these problems have adversely affected their ability to compete."[545] The Commission has previously found that a BOC meets its evidentiary burden by showing that it has adequately responded to problems as they have arisen, because there inevitably will be errors and carrier-to-carrier disputes, particularly considering the complexity of billing systems and the volume of transactions handled in states such as these.[546] We conclude that commenters fail to demonstrate that SBC's errors are indicative of a systemic problem, rather than isolated instances of problems typical of high-volume carrier-to-carrier commercial billing. In addition, we note that SBC has demonstrated that it has internal processes to expeditiously address problems as they arise, and that where problems have occurred, they have generally been addressed in a timely manner. Although we judge SBC's wholesale billing at the time of its application, we recognize that access to OSS is an evolutionary process, and we expect that SBC will continue to improve its wholesale billing in the future. If this situation deteriorates, we will not hesitate to take appropriate enforcement action pursuant to section 271(d)(6).[547]

g. Change Management

134. We find that SBC satisfies its checklist item two obligations regarding change management. As discussed below, SBC demonstrates that it uses the same change management process (CMP) in Illinois, Indiana, Ohio and Wisconsin as in SBC's wider 13-state region, and that this improved CMP includes the change management process that the Commission has already reviewed and found to be checklist compliant in previous section 271 orders.[548] In

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[545] Department of Justice Evaluation at 12.

[546] *See, e.g.*, *Verizon DC/MD/WVA Order*, 18 FCC Rcd at 5227-32, paras. 28-34 (finding that "[w]hile competing carriers advance a number of arguments about Verizon's billing, many of these problems appear to be resolved historical problems," and thus the claims are "not reflective of a systemic problem that would warrant a finding of checklist noncompliance"); *SBC California Order*, 17 FCC Rcd at 25696-702, paras. 90-95 (finding that the competitive LECs' disputes "have little relevance to the effectiveness of Pacific Bell's billing systems," and "did not provide sufficient information to rebut Pacific Bell's response that it took appropriate action with regard to these disputes," and thus concluding that "[m]any of the problems identified by commenters appear to be resolved historical problems, and even in the aggregate, these claims do not overcome Pacific Bell's demonstration of checklist compliance"); *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia*, WC Docket No. 02-214 , Memorandum Opinion and Order, 17 FCC Rcd 21880, 21901-12, paras. 40-55 (2002) (*Verizon Virginia Order*) (finding that "[w]hile competing carriers advance a number of arguments about Verizon's billing, many of these problems appear to be resolved historical problems and, even in the aggregate, these claims do not overcome Verizon's demonstration of checklist compliance" where the claims "do not indicate current systemic or recurring billing problems"); *Verizon New Jersey Order*, 17 FCC Rcd at 12336-37, para. 126 (finding that the Commission "cannot, without further evidence find that the parties have demonstrated systemic inaccuracies in Verizon's wholesale bills that would require a finding of checklist noncompliance").

[547] 47 U.S.C. § 271(d)(6).

[548] SBC Application at 75; SBC Cottrell/Lawson Aff. at para. 145-146; *see also e.g.*, *SBC California Order*, 17 FCC Rcd at 25702-03, para. 96.

addition, we note that BearingPoint's review of SBC's change management plan, documentation, and performance supports our findings.[549]

135. The Commission has explained that, in order to comply with the checklist requirements, a BOC's change management procedures must afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS.[550] After determining whether the BOC's change management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan.[551]

136. *Adequacy of Change Management Plan.* SBC indicates that it implemented its 13-state change management process in March 2001.[552] In response to some competitive LEC concerns, SBC states that it further improved on its processes with the Change Management Communication Plan (CMCP) which was adopted by the Michigan Public Service Commission on March 26, 2003,[553] and has now been implemented by SBC on a 13-state basis.[554] The CMCP

[549] *See* SBC Application at 75; SBC Cottrell/Lawson Aff., Attach. A at paras. 57-66, Attach. B at paras. 58-67, Attach. C at paras. 58-67, Attach. D at paras. 56-63. We reject the OCC's general arguments that the issue of SBC's performance relative to the timeliness of change management processes, among other issues, remains unresolved because the Ohio Commission relegated the resolution of some OSS functionality issues to performance plans. OCC Comments at 7-8; *see also generally* IUCC Reply at 1-3 (arguing that the OSS testing process is incomplete). As we have discussed above, we find that the testing of the change management process was sufficient.

[550] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, paras. 102-03; *SWBT Texas Order*, 15 FCC Rcd at 18403-04, paras. 106-08. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of a stable testing environment that mirrors production; and (5) the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway. *SWBT Texas Order*, 15 FCC Rcd at 18404, para. 108. We have also noted previously that we are open to consideration of change management plans that differ from those already found to be compliant with section 271. *Bell Atlantic New York* Order, 15 FCC Rcd at 4004, para. 111; *SWBT Texas Order*, 15 FCC at 18404, para. 109

[551] *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4004-05, paras. 101, 112.

[552] SBC Cottrell/Lawson Aff. at para. 145. The 13-state CMP applies to SBC and all competitive LECs operating in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas and Wisconsin. SBC Cottrell/Lawson Aff., Attach. O-5. The Commission previously reviewed and approved SBC's 13-state CMP in the Arkansas/Missouri and California section 271 proceedings. *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20725, para. 15; *SBC California Order*, 17 FCC Rcd at 25702, para. 96. SBC also adds that much of the current CMP that is used in the 13-state process was taken from its predecessor, SBC's eight-state CMP, which was reviewed and approved by the Commission in the Texas and Kansas/Oklahoma Section 271 applications. SBC Cottrell/Lawson Aff. at para. 145-146. *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd. at 6318, para. 166; *SWBT Texas Order*, 15 FCC Rcd at 18403, para. 105.

[553] *In the Matter, on the Commission's Own Motion, to Consider SBC's, f/k/a Ameritech Michigan, Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, Opinion and Order (Michigan Commission Mar. 26, 2003) (*Michigan Commission Compliance Plan Order*).

improvements were developed in order to provide competitive LECs with sufficient notice of competitive LEC-impacting programming changes made outside of normal release schedules.[555] We agreed that the CMP revision, including the addition of the CMCP, should assist in diminishing issues regarding changes that were not already specifically addressed under the initial 13-state CMP and, therefore, approved the revised CMP in the *SBC Michigan II* proceeding.[556] In addition, because SBC is utilizing the same revised CMP that we approved in Michigan, we conclude that the design of SBC's CMP is adequate for the four application states. Some commenters argue, however, that specific aspects of SBC's change management process are inadequate. We address and reject these various claims below.

137. *Competitive LEC Input.* We find that SBC provides sufficient opportunity for competitive LECs to have substantial input in the design and continued operation of the change management process. Specifically, we are not persuaded by various commenters' claims that SBC's CMP is inadequate because it allows too many defects in each release and does not sufficiently incorporate competitive LEC-initiated change requests.[557] We also note that the Department of Justice requested that the Commission carefully consider the adequacy of SBC's pre-release testing and defect resolution processes.[558] As we discuss below, we find that SBC's processes, while not perfect, do not warrant a finding of checklist noncompliance. As ACN Group admits, an error free release is a "logically unattainable" goal, and we find that commenters do not provide sufficient evidence that efficient competitors are denied a reasonable opportunity to compete by the volume of defects found in each release.[559] SBC states, and we

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[554] SBC Cottrell/Lawson Aff. at paras. 164-168.

[555] SBC Cottrell/Lawson Aff. at para. 165.

[556] *See* SBC Cottrell/Lawson Aff. at para. 166; *Michigan Commission Compliance Plan Order* at 5. We reject NALA's general argument that the functionality of SBC's OSS is frequently and arbitrarily changed. *See* NALA Sept. 11 *Ex Parte* Letter at 2. The record indicates that SBC has implemented an adequate change management plan, and we agree that there is no support for the contention that changes are "unilateral," "frequent," or "arbitrary." *See* SBC Sept. 22 *Ex Parte* Letter, Attach. B at 1.

[557] *See* Access One Comments at 5 (arguing that SBC has refused requests for a change in SBC's processes to facilitate "CLEC-to-CLEC" conversions, and has refused to provide a written account of SBC's standards for completing "CLEC-to-CLEC" conversions); ACN Group Comments at 23-24, 28-29 (arguing that change management has not helped to avoid defects in each release, and has not produced requested changes to allow local service requests to be "unrejected" instead of requiring a manual faxed order, and to allow for seamless "CLEC-to-CLEC customer migrations"); MCI Comments at 10-12 (arguing that SBC's process allows too many defects and fails to implement competitive LEC change requests); MCI Reply at 8 (arguing that the number of defects reported for SBC's latest EDI release, version 6.0, has increased to 79 defects as of August 27th); TDS Metrocom Comments at 25-27 (arguing that change management flaws allowed pre-ordering problems to arise in LSOG 5); *but see e.g.*, SBC Sept. 12 *Ex Parte* Letter, Attach. A at 5-7 (stating *inter alia* that the number of defects reflected in the EDR can vary widely because the EDR is updated daily and contains defect reports that upon analysis may be determined not to be actual defects. Also indicating that while there was no such preordering edit in LSOG 4 as claimed by TDS Metrocom, an edit is planned for SBC's September 27th quarterly release).

[558] Department of Justice Evaluation at 15-16.

[559] *See* ACN Group Comments at 28.

agree, that any increase in the number of defects reported does not necessarily reflect a decrease in the quality of SBC's releases or an increase in the actual number of defects, but may rather be a reflection of the improved reporting of information with SBC's Enhanced Defect Report (EDR), which now includes potentially competitive LEC-impacting defects identified by SBC.[560] We note that SBC's processes also allow competitive LECs to recommend changes by submitting a "CLEC Change Request" (CCR), and that CCRs are prioritized based on the average competitive LEC rating that competitive LECs assign for each CCR.[561] We therefore conclude, consistent with BearingPoint's findings, that competitive LECs are allowed substantial input in the change management process.[562]

138. *Testing Environment.* TDS Metrocom claims that one example of the problems with SBC's testing is that it allowed a defect that is now causing all of TDS Metrocom's orders for service in South Beloit, Illinois to be rejected.[563] Based on the entire record, we are not persuaded by TDS Metrocom's argument that SBC fails to provide a testing environment that mirrors production.[564] SBC indicates that, in this instance, its systems were rejecting TDS Metrocom's orders because of a conflict between the South Beloit, Illinois end-user locations, and the circuit ID of the Wisconsin central office that served customers from that location.[565] SBC states that it is in the process of implementing a change to permanently address this situation and that it has arranged for these orders to drop to the local service center for manual handling in the interim.[566] Furthermore, SBC indicates that its joint testing environment mirrors its production environment except during the competitive LEC test window for a new release.[567]

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[560] *See* SBC Reply at 41; SBC Brown/Cottrell/Lawson Reply Aff. at para. 16-18.

[561] *See* SBC Cottrell/Lawson Aff. at para. 148-149. SBC indicates that it has implemented approximately 180 competitive LEC-initiated change requests since 1998. SBC Cottrell/Lawson Aff. at para. 152. SBC also states that CCR's like Choice One's (ACN Group's) request for "unreject" functionality have not been summarily dismissed, but rather have been fully considered and discussed at CMP meetings, in accordance with the CMP. SBC Reply at 40-41.

[562] *See* SBC Cottrell/Lawson Aff., Attach. A at para. 61; SBC Cottrell/Lawson Aff., Attach. B at para. 62; SBC Cottrell/Lawson Aff., Attach. C at para. 62; SBC Cottrell/Lawson Aff., Attach. D at para. 59.

[563] TDS Metrocom Comments at 24-25 (arguing that the testing environment differs substantially from the production environment so that problems appear in the production environment when the exact same ordering information that passed through the testing environment is entered).

[564] TDS Metrocom Comments at 24-25.

[565] SBC Cottrell/Lawson Aff. at para. 162. SBC also indicates that the only other instance of a TDS Metrocom reject occurring in production after passing in the test environment was caused by a LSC representative that failed to recognize that the LSR should have been rejected in the test environment. SBC Brown/Cottrell/Lawson Reply Aff., Attach. D at para. 41. SBC states that it has reinforced with the LSC representatives that the same tools, guides, and checks used in production must also be used for competitive LEC testing. SBC Brown/Cottrell/Lawson Reply Aff., Attach. D at para. 41.

[566] SBC Cottrell/Lawson Aff. at para. 162.

[567] SBC Cottrell/Lawson Aff. at para. 190.

BearingPoint's testing also confirms that SBC provides competitive LECs with an adequate and functional test environment that is separate from, but mirrors, the commercial production environment.[568] Because SBC's demonstration and BearingPoint's testing results indicate that SBC provides a sufficient testing environment, we are unable to conclude that SBC's testing suffers from any systemic flaws based on TDS Metrocom's claim, which appears to represent an isolated instance. We do not find such isolated instances to be competitively significant. We further note that the same testing processes and systems that are used to perform testing in the relevant states were reviewed and approved in the Arkansas/Missouri, California, and Michigan II proceedings.[569] Thus, we find that SBC's test environment satisfies the requirements of checklist item two.

139. *Adherence to the CMP.* Finally, we find that SBC has demonstrated a pattern of compliance with its change management plan.[570] For example, SBC demonstrates how it complied with the CMP notification, documentation and testing requirements that applied to the June 2003 release of LSOG 6 for ordering and pre-ordering.[571] Moreover, as noted above, SBC revised its CMP to contain increased notice requirements, including additional training for SBC personnel, and quarterly status reports on compliance.[572] SBC filed the first quarterly status report describing its compliance with the new CMP on April 30, 2003, in accordance with the CMCP, which further supports a finding that SBC is complying with the notice provisions of the new CMP.[573] Therefore, we conclude that SBC complies with the change management requirements of checklist item two.

140. As we stated in the *SBC Michigan II Order*, although we find SBC's performance

[568] *See* SBC Cottrell/Lawson Aff., Attach. A at para. 64; SBC Cottrell/Lawson Aff., Attach. B at para. 65; SBC Cottrell/Lawson Aff., Attach. C at para. 65; SBC Cottrell/Lawson Aff., Attach. D at para 61.

[569] *See SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20725, para. 15; *SBC California Order*, 17 FCC Rcd at 25702, para. 96; *SBC Michigan II Order* at para. 121.

[570] *See Bell Atlantic New York Order*, 15 FCC Rcd at 3999, 4004-05, paras. 101, 112. As we stated above, we reject various commenters' allegations that SBC's CMP fails to sufficiently incorporate competitive LEC-initiated change requests. *See supra* para. 137. Even if we were to accept MCI's allegations that several requests for changes remain outstanding, we note that MCI fails to cite any provision of the CMP that SBC violates. *See* MCI Comments at 11-12. Furthermore, in prior section 271 proceedings, we have found that an isolated instance of noncompliance with CMP does not rise to a level of checklist noncompliance when a BOC shows a pattern of adherence to its CMP. *Qwest Nine State Order*, 17 FCC Rcd at 26393, para. 148 (finding that an isolated instance of noncompliance with CMP was not sufficient to undercut Qwest's overall performance); *Verizon Virginia Order*, 17 FCC Rcd at 21913, para. 57 (finding that an "isolated incident" did not undermine Verizon's pattern of adherence to its CMP).

[571] SBC Cottrell/Lawson Aff. at paras. 155-157.

[572] SBC Cottrell/Lawson Aff. at paras. 168-169; SBC Sept. 12 *Ex Parte* Letter at Attach. A, p. 5.

[573] SBC Cottrell/Lawson Aff. at para. 169; *In the Matter, on the Commission's Own Motion, to Consider SBC's, f/k/a Ameritech Michigan. Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, Change Management Communications Plan Status Report (Michigan Commission Apr. 30, 2003) (CMCP Status Report).

to be adequate here, we believe it is essential that SBC follow through on its commitment to continue to improve its change management process and adherence.[574] It is critical that SBC continue to work collaboratively with competitive LECs on the continued operation of the change management process. Failure to observe an effective change management process could lead to review by the relevant state commissions or enforcement action by this Commission in accordance with section 271(d)(6).

h. UNE Combinations

141. As part of its requirements under checklist item two, a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements, and it does not separate already combined elements, except at the specific request of a competing carrier.[575] We find, as did the state commissions, that SBC provides nondiscriminatory access to combinations of UNEs in compliance with the Commission's rules.[576] Specifically, we determine that competitive LECs may order already-combined UNE combinations from SBC, which SBC will not separate unless requested to do so by the competitive LEC.[577] Moreover, pursuant to interconnection agreements, SBC combines UNEs, including new UNE-P combinations and enhanced extended links, upon a competitive LEC's request.[578] SBC has also demonstrated that it allows competitors to combine their own UNE combinations.[579] Finally, we note that no commenter has expressed any concern about SBC's provision of UNE combinations.

C. Checklist item 4 – Unbundled Local Loops

142. Section 271(c)(2)(B) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching

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[574] *See SBC Michigan II Order* at para. 126.

[575] 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.313(b) (2002).

[576] *See Wisconsin Commission Phase I Order* at 121; Illinois Commission Comments at 50-51; Ohio Commission Comments at 132-41. Indiana states that, on the whole, SBC Indiana has complied with the availability requirements of checklist item 2. Indiana Commission Comments at 75.

[577] SBC Application App. A, Vol. 1, Tab 1, Affidavit of Scott J. Alexander Regarding Illinois (SBC Alexander Illinois Aff.) at para. 81; SBC Application App. A, Vol. 1, Tab 2, Affidavit of Scott J. Alexander Regarding Indiana (SBC Alexander Indiana Aff.) at para. 81; SBC Application App. A, Vol. 1, Tab 3, Affidavit of Scott J. Alexander Regarding Ohio (SBC Alexander Ohio Aff.) at para. 81; SBC Application App. A, Vol. 1, Tab 4, Affidavit of Scott J. Alexander Regarding Wisconsin (SBC Alexander Wisconsin Aff.) at para. 81.

[578] SBC Alexander Illinois Aff. at paras. 82-83; SBC Alexander Indiana Aff. at paras. 82-83; SBC Alexander Ohio Aff. at paras. 82-83; SBC Alexander Wisconsin Aff. at paras. 82-84.

[579] SBC Application at 42 (citing, as an example, SBC Alexander Illinois Aff. at paras. 39-53, 80 and SBC Application App. A, Vol. 3, Tab 13, Affidavit of William C. Deere Regarding Illinois (SBC Deere Illinois Aff.) at para. 9).

or other services."[580] Based on the evidence in the record, we conclude, consistent with the state commissions, that SBC provides unbundled local loops in accordance with the requirements of section 271 and our rules.[581] Our conclusion is based on our review of SBC's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high-capacity loops, as well as our review of SBC's processes for hot cut provisioning, and line sharing and line splitting. SBC has provisioned thousands of stand-alone loop UNEs in the four application states; 319,000 in Illinois; 53,000 in Indiana; 125,470 in Ohio; and 229,539 in Wisconsin.[582]

143. *xDSL-Capable Loops.* We find that SBC provides xDSL-capable loops to competitors in a nondiscriminatory manner.[583] Although SBC missed one installation interval metric for DSL loops for several months in Wisconsin,[584] as the Commission has noted in prior section 271 orders, we accord the installation interval metrics little weight because results can be affected by a variety of factors outside the BOC's control that are unrelated to provisioning timeliness.[585] Instead, we conclude that the missed due date metric is a more reliable indicator of

[580] 47 U.S.C. § 271(c)(2)(B)(iv); *see also* Appendix F (setting forth the requirements under checklist item 4).

[581] Illinois Commission Comments at 96; Ohio Commission Comments at 186; Wisconsin Commission Comments at 1. We note that the Indiana Commission deferred the determination of whether SBC is in compliance with checklist item 4 to the Commission. Indiana Commission Comments at 17-18. As we discuss below, we find that SBC has demonstrated compliance in all four states, including Indiana.

[582] SBC Application at 91; SBC Heritage Illinois Aff. at Appendix A; SBC Heritage Indiana Aff. at Appendix A; SBC Heritage Ohio Aff. at Appendix E; SBC Heritage Wisconsin Aff. at Appendix E.

[583] SBC generally met the relevant parity or benchmark standard regarding provisioning and maintenance and repair of xDSL-capable loops. *See, e.g.*, PM 58-04 (Percent Ameritech-Caused Missed Due Dates; DSL; No Line Sharing); PM 59-04 (Percent Trouble Reports Within 30 Days of Installation; DSL; No Line Sharing); PM 65-04 (Trouble Report Rate; DSL; No Line Sharing); PM 67-04 (Mean Time to Restore; Dispatch; DSL; No Line Sharing); PM 67-19 (Mean Time to Restore; No Dispatch; DSL; No Line Sharing); PM 69-04 (Percent Repeat Trouble Reports; DSL; No Line Sharing); *see also* Appendices B-E. We note that SBC missed the benchmark PM 67-04 (Mean Time to Restore; Dispatch; DSL; No Line Sharing) in Wisconsin by 1.28 hours in March 2003 and 0.45 hours in July 2003. SBC also missed the benchmark PM 69-04 (Percent Repeat Trouble Reports; DSL; No Line Sharing) in Indiana by 2.29% in March 2003 and 1.33% in June 2003. Since the misses to both metrics were by small margins, we do not find the misses to be competitively significant.

[584] SBC missed PM 55-12 (Average Installation Interval; DSL Loops Requiring No Conditioning; Line Sharing) in Wisconsin in March through May 2003 by an average of 0.47 days. However, since SBC has shown improvement by achieving parity for PM 55-12 in Wisconsin for the months of June and July 2003, we do not find that the earlier misses indicate a systemic problem with SBC's performance. Appendices B-E; SBC Ehr Reply Aff., Attach. C at 18. In June 2003, the average installation interval was 2.97 days for SBC versus 2.94 days for competitive LECs and, in July 2003, SBC's average was 2.96 days versus 2.89 days for competitive LECs. Appendices B-E. Therefore, we reject ACN Group's arguments that SBC's installation intervals for stand-alone DSL loops were much longer than those for its retail affiliate. ACN Group Comments at 37.

[585] *See, e.g., SBC Michigan II Order* at para. 128 n. 429; *Bell Atlantic New York Order*, 15 FCC Rcd at 4061, paras. 202-10 (listing factors beyond the BOC's control that affect the average installation interval metric: "(1) competitive LECs are choosing installation dates beyond the first installation date made available by Bell Atlantic's systems (the 'W-coding' problem); (2) for non-dispatch orders, competitive LECs are ordering a relatively larger (continued....)

provisioning timeliness. In this regard, SBC met the applicable standard for missed due dates for all months under review.[586] In addition, MCI complains that SBC is unable to include a DSL line in a "hunt group" that also contains non-DSL lines. However, we note that MCI raised this issue in the *SBC Michigan II* proceeding, and as we determined there, we find that MCI's complaints do not warrant a finding of checklist noncompliance.[587]

144. *Voice-Grade Loops, Digital Loops, Dark Fiber and Hot Cuts.* Based on the evidence in the record we find that SBC demonstrates that it provides voice-grade loops,[588] digital loops,[589] dark fiber,[590] and hot cuts[591] in accordance with the requirements of checklist item four.

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share of services and UNEs that have long standard intervals (the 'order mix' problem); and (3) for dispatch orders, competitive LECs are ordering a relatively larger share of services in geographic areas that are served by busier garages and, as a result, reflect later available due dates (the 'geographic mix' problem)."; *see also Qwest Nine State Order*, 17 FCC Rcd at 26402, para. 163; *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, Memorandum Opinion and Order, 17 FCC Rcd 25828, 25896-97, para. 136 and n.463 (2002) (*BellSouth Florida/Tennessee Order*).

[586] PM 58-04 (Percent Ameritech-Caused Missed Due Dates; DSL; No Line Sharing). Although SBC missed the benchmark PM IN 1-01 (Percent Loop Acceptance Test (LAT) Completed on or Prior to the Completion Date of the Order – DSL Loops without line sharing) in Wisconsin by 3.3% in March, 27.5% in April, and 10% in June, the volume of orders was low (*e.g.* only 16 competitive LEC orders in April). Appendices B-E; SBC Ehr Reply Aff., Attach. C. at 19. Since a small number of missed due dates led to the missed metric, we do not find the misses of PM IN 1-01 to be competitively significant.

[587] *See SBC Michigan II Order* at para. 131. A hunt group is a series of telephone lines, and their associated telephone numbers and switch ports, which are organized so that if a call comes in to a line in the hunt group that is busy, the call will be passed to the next line in the hunt group until a free line is found. *SBC Michigan II Order* at para. 131 n.442. SBC responds that while it currently does not provide such a feature, MCI only recently raised this issue in June, 2003. Moreover, SBC explains that it does have a currently available process that emulates the hunting functionality between a ULS-ST port and a UNE-P hunt group by using existing switch feature technology (*i.e.* the use of Busy Line Transfer), and if competitive LECs are not satisfied with the Busy Line Transfer option, they have the ability to formally request the development of a process that allows actual hunt groups containing both UNE-P and stand alone ULS-ST ports either through a BFR or through Change Management. *See* SBC Chapman Reply Aff. at paras. 33-34.

[588] *See, e.g.*, PM 58-05 (Percent Ameritech-Caused Missed Due Dates; 8.0 dB Loops); PM 59-05 (Percent Trouble Reports Within 30 Days of Installation; 8.0 dB Loops); *see also* Appendices B-E. SBC has satisfied the performance standards for these important metrics in all four states over the relevant five months. Therefore, we disagree with ACN Group's arguments that SBC's performance regarding voice grade loops is problematic. ACN Group Comments at 38. SBC generally met the relevant parity or benchmark standard regarding maintenance and repair of voice grade loops. *See, e.g.*, PM 66-04 (Percent Missed Repair Commitments; UNE; 2 Wire Analog 8 dB Loops); PM 67-05 (Mean Time to Restore (Hours); Dispatch; 8.0 dB Loops); PM 67-20 (Mean Time to Restore (Hours); No Dispatch; 8.0 dB Loops); PM 68-01 (Percent Out Of Service (OOS) < 24 Hours; 2 Wire Analog 8.0 dB Loops); PM 69-05 (Percent Repeat Reports; 8.0 dB Loops).

[589] *See, e.g.*, PM 58-06 (Percent Ameritech-Caused Missed Due Dates: BRI Loops with Test Access); PM 58-08 (Percent Ameritech-Caused Missed Due Dates; DS1 Loops); PM 59-06 (Percent Trouble Reports Within 30 Days of Installation; BRI Loops with Test Access); PM 59-08 (Percent Trouble Reports Within 30 Days of Installation; DS1 Loops with Test Access); *see also* Appendices B-E. SBC missed an ordering metric for loops for several of the application months. SBC missed the 95% benchmark for PM 5-34 (Percent of FOCs Returned within 24 Clock (continued....)

We disagree with ACN Group's arguments that SBC has failed to provide nondiscriminatory access to unbundled DS1 and DSL loops.[592] In particular, ACN Group argues that SBC's trouble rate in Illinois for DS1 loops has generally been far below the trouble rate for Mpower and the trouble rate for all competitive LECs.[593] As we stated previously, contrary to ACN Group's claims, we found that, although SBC did not meet parity every month for PM 65-08 (Trouble Report Rate; DS1 Loops with Test Access) in Illinois, the misses were not competitively significant.[594]

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Hours; Manually Submitted Requests UNE Loop (1-49 loops)) in Illinois by an average of over 5% for March through June 2003. SBC also missed PM 55-03 (Average Installation Interval; UNE DS1 Loop (includes PRI)) in Indiana from March through July 2003, in Illinois from April through July 2003, and in Wisconsin from May through July 2003. SBC also missed PM 56-03 (Percentage of Installations Completed within Customer Requested Due Date-UNE-DS1) in Indiana in May through July 2003. However, in Illinois and Wisconsin, SBC met PM 56-03 (Percent Installations Completed Within the Customer Requested Due Date) during four of the five application months and, in Indiana, SBC only missed ten installations during the five application months, resulting in 96.3% of all Indiana competitive LECs' DS1 loops since March being installed within the requested due date. SBC Ehr Reply Aff., Attach. C at 11. Therefore, we find that overall, SBC installed DS1 loops in a timely manner as requested by the competitive LECs, and we do not find SBC's misses of the installation metrics to be competitively significant. In addition, SBC generally met the relevant parity or benchmark standard regarding maintenance and repair of digital loops. *See, e.g.*, PM 67-06 (Mean Time to Restore (Hours); Dispatch; BRI Loops with Test Access); PM 67-21 (Mean Time to Restore (Hours); No Dispatch; BRI Loops with Test Access); PM 69-06 (Percent Repeat Reports; BRI Loops with Test Access); PM 67-08 (Mean Time to Restore (Hours); Dispatch; DS1 Loops with Test Access); PM 67-23 (Mean Time to Restore (Hours); No Dispatch; DS1 Loops with Test Access); PM 69-08 (Percent Repeat Reports; DS1 Loops with Test Access); *see also* Appendices B-E. However, SBC missed PM 65-06 (Trouble Report Rate; BRI Loops with Test Access) in Illinois by an average of 0.3 trouble reports per month per 100 UNE loops. Similarly, since the performance difference was less than one trouble report (0.3) per 100 circuits, we again do not find the misses to be competitively significant. Appendices B-E; SBC Ehr Reply Aff., Attach. C at 7. SBC also missed PM 65-08 (Trouble Report Rate; DS1 Loops with Test Access) in Illinois and Ohio by an average of .9 trouble reports per month per 100 UNE loops. Nonetheless, since the performance difference was less than one trouble report (0.9) per 100 circuits, we do not find the misses to be competitively significant. Appendices B-E; Ehr Reply Aff., Attach C. at 7, 14. We therefore reject ACN Group's arguments that SBC's performance regarding voice grade loops is discriminatory. ACN Group Comments at 38.

[590] SBC Deere Illinois Aff. at paras. 92-98; SBC Application App. A, Vol. 3, Tab 14, Affidavit of William C. Deere Regarding Indiana SBC Deere Indiana Aff.) at paras. 92-98; SBC Application App. A, Vol. 3, Tab 15, Affidavit of William C. Deere Regarding Ohio (SBC Deere Ohio Aff.) at paras. 92-98; SBC Application App. A, Vol. 3, Tab 16, Affidavit of William C. Deere Regarding Wisconsin (SBC Deere Wisconsin Aff.) at paras. 92-98.

[591] *See* PM 114 (Percentage Premature Disconnects (Coordinated Cutovers)); PM 114.1 (CHC/FDT LNP w/Loop Provisioning Interval); PM 115 (Percent Ameritech-Caused Delayed Coordinated Cutovers)). We note that SBC missed the benchmark PM 114 (Percentage Premature Disconnects (Coordinated Cutovers) by 2% in March and .15% in June 2003. However, since both of those misses were by small margins, we do not find the misses to be competitively significant.

[592] ACN Group Comments at 39.

[593] ACN Group Comments at 39.

[594] *See* note 588, *supra*. *See also* SBC Chapman Reply Aff. at paras. 22-27 (describing SBC's processes for reporting and resolving trouble in connection with line splitting).

145. *Line Sharing and Line Splitting.* Based on the evidence in the record, we find that SBC provides nondiscriminatory access to the high frequency portion of the loop (line sharing). SBC's performance data for line shared loops demonstrate that it is generally in compliance with the parity and benchmark measures established in the application states.[595]

146. SBC also provides access to network elements necessary for competing providers to provide line splitting. Line splitting is the shared use of an unbundled loop for the provision of voice and data services where the incumbent LEC provides neither voice nor data services.[596] SBC states that it supports line splitting where a competitive LEC purchases separate elements (including unbundled loops, unbundled switching, and cross connects for these UNEs) and combines them with their own (or a partner competitive LEC's) splitter in a collocation arrangement.[597] SBC demonstrates that it has a legal obligation to provide line splitting through nondiscriminatory rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and to combine it with unbundled switching and shared transport.[598]

147. Competitive LECs raise a number of claims in this proceeding regarding SBC's procedures and costs for ordering, installing and disconnecting line splitting arrangements.[599] The Department of Justice also notes that for the same reasons as in the *SBC Michigan II* proceeding, the "Commission should determine whether SBC's processes provide non-

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[595] *See, e.g.*, PM 58-03 (Percent Ameritech-Caused Missed Due Dates; DSL; Line Sharing); PM 65-03 (Trouble Report Rate; DSL; Line Sharing); PM 66-03 (Percent Missed Repair Commitments; DSL; Line Sharing); PM 67-03 (Mean Time to Restore; Dispatch; DSL; Line Sharing); PM 67-18 (Mean Time to Restore; No Dispatch; DSL; Line Sharing); PM 69-03 (Percent Repeat (Trouble) Reports; DSL; Line Sharing); *see also* Appendices B-E. We note that SBC missed the parity PM 65-03 in Illinois (Trouble Report Rate; DSL; Line Sharing) in March 2003 by .26 trouble reports per 100 circuits and in April 2003 by .13 trouble reports per 100 circuits. However, SBC has shown improvement by meeting the parity metric in each of the past three application months. Therefore, we do not find the misses to be competitively significant. Although SBC missed the parity metric PM 59-03 (Percent Installation Trouble Reports Within 30 days (I-30) of Installation) in Illinois by an average of approximately .9% between March and June 2003, competitive LECs achieved parity in July. Appendices B-E; SBC Ehr Reply Aff., Attach. C at 7. Given SBC's improved performance, we disagree with ACN Group's arguments that SBC's performance regarding the installation interval metrics for line shared loops is discriminatory. ACN Group Comments at 38. Moreover, as discussed above, we accord the installation interval metrics little weight because results can be affected by a variety of factors outside the BOC's control that are unrelated to provisioning timeliness. *See, e.g., Qwest Nine State Order*, 17 FCC Rcd at 26402, para. 163; *BellSouth Florida/Tennessee Order*, 17 FCC Rcd at 25896-97, para. 136 and n.463; *Bell Atlantic New York Order*, 15 FCC Rcd at 4061, paras. 202-10.

[596] SBC Chapman Aff. at para. 82.

[597] *Id.*

[598] *See SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

[599] We note that AT&T withdrew its comments related to SBC's non-recurring charges for line splitting. *See AT&T Motion to Withdraw.* As a result, AT&T no longer raises this issue for our consideration. We do, however, consider the related cost issues that MCI raises.

discriminatory access to line-splitting and UNE-platform services."[600] We note that these claims were raised and rejected in the *SBC Michigan II* proceeding.[601] Therefore, we incorporate and reference the *SBC Michigan II Order*, and find it unnecessary to readdress these issues here. We conclude, as we did in the *SBC Michigan II Order*, that SBC's line splitting policies do not warrant a finding of checklist noncompliance.[602]

148. *Facilities Provisioning*. We do not find that ACN Group's claims that SBC charges competitive LECs erroneous trip charges rise to the level of checklist noncompliance.[603] Specifically, ACN Group argues that SBC mistakenly bills Mpower for dispatches to other competitive LECs and also bills Mpower trip charges for repairs, even though the problem was with SBC's facilities.[604] In response to the claim that SBC mistakenly bills Mpower for dispatches to other competitive LECs, SBC states that it has no knowledge of such instances, and that ACN Group fails to provide the Commission with sufficient specificity to evaluate this complaint.[605] Regarding the trip charges for repairs, the record shows that SBC and Mpower are working together to investigate the improper billing of Mpower for trip charges for repairs.[606] As part of that process, SBC and Mpower are taking a random sampling of SBC's trouble tickets and investigation of closure codes used by SBC's outside technicians.[607] Upon completion of the investigation, Mpower and SBC will determine the next step in the dispute process, including

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[600] Department of Justice Evaluation at 16.

[601] *See SBC Michigan II Order* at paras. 133-143. Specifically, commenters assert that if a competitive LEC's customer wishes to discontinue xDSL service provided through line splitting, SBC requires installation of a new loop, rather than simply changing out cross-connects using the existing loop that is already in service, and this increases the cost to the competitive LEC. AT&T Comments at 10-22; MCI Comments at 1-5; AT&T Reply at 6-11; MCI Reply at 1-5; Letter from Kimberly A. Scardino, Director, Federal Regulatory, MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-167 at 1-2 (filed September 5, 2003) (MCI September 5 *Ex Parte* Letter). Furthermore, commenters argue that SBC's process is more complicated, creates unnecessary service outages, risks service quality problems, and allows SBC to levy a substantial non-recurring charge for the establishment of a new unbundled loop. AT&T Comments at 14; MCI Comments at 1-4; MCI September 5 *Ex Parte* Letter at 2. Commenters also argue that none of these problems are incurred by SBC retail customers who purchase DSL and subsequently disconnect it, as SBC removes the DSL on the existing line without installation of a new line. AT&T Comments at 17; MCI Comments at 2; MCI September 5 *Ex Parte* Letter at 3. Competitive LECs further complain that data LECs are unable to submit line splitting orders on behalf of competitive LECs unless they are on the same version of EDI. AT&T Comments at 21-22; MCI Comments at 5.

[602] *See SBC Michigan II Order* at paras. 133-143. In the circumstances brought before us here, where there is no clear state error and MCI raises fact-specific and technical issues which may involve underlying cost studies, we defer to the states for determining pricing for line splitting.

[603] ACN Group Comments at 40.

[604] *Id.*

[605] SBC Muhs Reply Aff. at para. 38.

[606] SBC Muhs Reply Aff. at para. 37.

[607] SBC Muhs Reply Aff. at paras. 36-37.

whether any potential adjustments need to be made.[608] Based on SBC's current performance and its efforts thus far to work with competitive LECs to resolve this issue, we do not find that the issue rises to the level of checklist noncompliance.

149. We also reject ACN Group's argument that SBC has a different facilities provisioning policy if it has a section 271 application pending in a state than it does once it has section 271 authority granted for the state.[609] Specifically, ACN Group argues that when SBC has a section 271 application pending, if a facility a competitive LEC ordered needs additional equipment, such as a line card or repeater, SBC will add the additional equipment at no additional charge.[610] However, ACN Group argues that once section 271 authority has been granted, requests concerning facilities needing additional equipment are rejected on a "no facilities available basis," requiring competitive LECs to order the facility out of SBC's special access tariff.[611] We do not find that this issue rises to the level of checklist noncompliance. First, we note that ACN Group does not raise an issue that is currently in existence in the application states. Second, the record shows that SBC Midwest's entire facilities modification policy was developed collaboratively in conjunction with competitive LECs and the state commissions.[612] If competitive LECs have concerns with SBC's facilities modification policy, those concerns should be addressed with either the state commissions or the Commission's Enforcement Bureau.

150. *Unbundled IDLC/NGDLC.* ACN Group contends that SBC is required to provide integrated digital loop carrier (IDLC) facilities and next generation digital loop carrier (NGDLC) facilities and associated packet switching facilities to competitive LECs on an unbundled basis and at TELRIC rates, but does not do so in Illinois.[613] According to ACN Group, SBC's denial of access to these facilities renders approval of this application contrary to the public interest. We disagree. First, the rules under which we evaluate this application do not require SBC to unbundle its digital loop carrier (DLC) facilities under all circumstances.[614] When a competitive LEC orders a loop that is being served using IDLC, SBC will migrate the loop to spare copper

[608] SBC Muhs Reply Aff. at para. 37.

[609] ACN Group Comments at 40-41.

[610] ACN Group Comments at 40-41.

[611] ACN Group Comments at 41.

[612] SBC Reply at 77; SBC Application Reply App., Vol. 2a, Tab 7, Reply Affidavit of William C. Deere (SBC Deere Reply Aff.) at para. 7 n.4.

[613] ACN Group contends that SBC either: (1) does not offer such access or at all; or (2) denies any obligation to price such offerings at TELRIC levels. *See* ACN Group Comments at 44, 52.

[614] The Commission made clear in the *UNE Remand Order* that, notwithstanding earlier hopes that IDLC-fed loops could feasibly be unbundled, such unbundling "ha[d] not proven practicable," and "[c]ompetitors [were] not yet able economically to separate and access IDLC customers' traffic on the wire-center side of the IDLC multiplexing devices." *UNE Remand Order*, 15 FCC Rcd at 3794, para. 217 n.418.

facilities at no additional charge to the competitor so long as such facilities exist.[615] If no spare facilities exist, SBC will perform the construction necessary to install a copper loop in accordance with its "facilities modification" policy.[616] Thus, SBC's policies do not deprive competitors of access to transmission facilities, even where its loops are fed by DLC that SBC will not or cannot unbundle. Second, the applicable rules require SBC to provide access to its packet switching facilities only if, among other things, it has refused to permit a requesting carrier "to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point [or to provide] a virtual collocation arrangement at these subloop interconnection points."[617] SBC, however, permits competitive LECs to deploy DSLAMs at its remote terminals,[618] and no commenter has claimed otherwise. Thus, SBC's policies with respect to IDLC and NGDLC loops, and the associated packet switching facilities, do not warrant rejection of this application.

V. OTHER CHECKLIST ITEMS

A. Checklist Item 7 – Access to 911/E911 and Operator Services/Directory Assistance

1. Access to 911/E911

151. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide "[n]ondiscriminatory access to 911 and E911 services."[619] A BOC must provide competitors with access to its 911 and E911 services in the same manner that it provides such access to itself, *i.e.*, at parity.[620] Specifically, the BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."[621] We find, as did the state commissions,[622] that SBC provides nondiscriminatory access to 911 and E911 services in the applicant states.[623]

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615 *See* SBC Deere Illinois Aff. at para. 101.

616 *See id.* at paras. 101, 103-119.

617 47 C.F.R. § 51.319(c)(5) (2000).

618 *See* SBC Chapman Aff. at para. 79.

619 47 U.S.C. § 271(c)(2)(B)(vii).

620 *Qwest Three State Order*, 18 FCC Rcd at 7389, para. 109.

621 *Id.* (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256).

622 *See* Illinois Commission Comments at 109-10; Indiana Commission Comments at 121-22; Ohio Commission Comments at 231; *Wisconsin Commission Phase I Order* at 14, 26-27.

623 *See* SBC Ehr Illinois Aff. at paras. 148-53; SBC Ehr Indiana Aff. at paras. 129-33; SBC Ehr Ohio Aff. at paras. 134-38; SBC Ehr Wisconsin Aff. at paras. 130-36.

152. We reject the argument, raised by AT&T and MCI, that SBC's policies regarding population of the E911 database violate the competitive checklist. On June 20, 2003, SBC delivered to all competitive LECs within its entire 13-state region an accessible letter offering "clarification" of its E911 policies (June 20 Accessible Letter). The letter addressed "those instances in which a CLEC[] wishes to engage in line splitting by reusing facilities previously used as part of a UNE-P or line shared arrangement."[624] SBC indicated that it would retain end-user information upon the transition from UNE-P or line sharing to line splitting, but explained that because "[t]he CLEC may physically rearrange or disconnect the UNEs used in the original line splitting arrangement . . . without [SBC] having any knowledge or information as to the change in service," it was "the responsibility of the CLEC to ensure the 911/E911 database accurately reflects its end-user customer's information" after the transition.[625]

153. On July 15, SBC followed the June 20 Accessible Letter with another accessible letter, delivered only to competitive LECs within the five-state SBC Midwest Region (July 15 Accessible Letter).[626] This second letter further clarified SBC's policy, explaining that the June 20 Accessible Letter "was intended solely to address a potential situation in which a CLEC initially engages in line-splitting by reusing facilities previously used as part of a UNE-P or line-shared arrangement, but subsequently physically rearranges the UNE loop and switch port within the CLEC's collocation arrangement (or that of its partnering CLEC)."[627] The July 15 letter also made clear that the policy applied only in cases involving a change in "the customer's physical service address," and emphasized that "SBC Midwest 5-State remains responsible for implementing MSAG changes" – that is, changes of general applicability, such as modifications of a town name, a street name, or the directional rules governing a street.[628]

154. We do not believe that the policy, as clarified, constitutes discriminatory provision of 911 or E911 services in violation of checklist item seven.[629] During the course of the *SBC Michigan II* proceeding, in an affidavit incorporated here,[630] SBC explained that "the CLEC is in

[624] SBC Application, App. K, Tab 25, CLECALL03-077.

[625] *Id*

[626] AT&T Comments, Declaration of Sarah DeYound, James F. Henson and Walter W. Willard (AT&T DeYoung/Henson/Willard Decl.) Ex. 1.

[627] *Id.*

[628] *Id.*

[629] Nor do we believe that the activity about which AT&T and MCI complain violates checklist item 10. *See, e.g.*, AT&T Comments at 22. Irrespective of whether that checklist item is relevant to a BOC's purported failure to provide nondiscriminatory access to 911 and E911, checklist item 10 does not set forth requirements with respect to 911 and E911 services that are distinct from the obligations imposed by checklist item seven. Therefore, because we conclude that SBC satisfies checklist item seven, we also conclude that it satisfies checklist item 10 with respect to any obligations that item might impose regarding the provision of 911 and E911.

[630] *See* SBC Reply App., Vol. 3, Tab 11, Reply Affidavit of Bernard Eugene Valentine (SBC Valentine Reply Aff.) at para. 2.

physical control of the loop and the switch port once those have been provided to the CLEC's collocation space, and because the CLEC has the ability to disconnect and rearrange the original combination, SBC cannot be responsible for changes made without its knowledge."[631] We are thus persuaded that competitive LECs could change a customer's address without notifying SBC,[632] and believe that this possibility justifies SBC's policy requiring competitive carriers to notify it of a line splitting customer's post-conversion change of address.

155. AT&T and MCI contend that even given the clarifications above, SBC is still in violation of checklist item seven. Specifically, they complain that the breadth of the June 20 Accessible Letter indicates that SBC initially planned to implement a more discriminatory policy;[633] that SBC's policies in California violate the competitive checklist;[634] and that the policy, as clarified, remains ambiguous.[635] As we explained more fully in our recent *SBC Michigan II Order*, however, SBC's policy in the Midwest region, as clarified, does not violate the competitive checklist, and allegations regarding its policies in states other than those at issue in this application, as well as allegations regarding plans that have not been implemented, are irrelevant to our section 271 inquiry. Moreover, SBC's policy in the states at issue here is clear. Specifically, as set forth above, the July 15 Accessible Letter stated plainly that the policy described applied "solely" to "situation[s] in which a CLEC initially engages in line-splitting by reusing facilities previously used as part of a UNE-P or line-shared arrangement," and only required competitive carriers "to provide updated end-user service address information based upon a change in the customer's physical service address."[636] We thus reject AT&T's and MCI's complaints.

2. Access to Operator Services/Directory Assistance

156. Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to

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[631] *See Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Authorization To Provide In-Region, InterLATA Services in Michigan*, Supplemental Reply Affidavit of Bernard Eugene Valentine at paras. 9, 19-29, WC Docket No. 03-138 (filed Jul. 21, 2003) (SBC Valentine *Michigan II* Reply Aff.).

[632] *See* SBC Valentine *Michigan II* Reply Aff. at 19 ("When a CLEC employs a line-splitting arrangement, it controls the physical connection of both the switch port and the unbundled loop to a splitter located within its collocation arrangement (or the collocation arrangement of a partnering CLEC). Unlike a typical resale or UNE-P scenario, wherein SBC Midwest maintains control of all physical connections in the network, and can thus ensure that the physical end-user service address associated with the loop is appropriately reflected in the E911 database, SBC Midwest loses that capability in the line-splitting scenario – even where the switch port and loop were previously elements of a UNE-P."); *see also id.* at para. 20.

[633] *See* AT&T Comments at 23-24.

[634] *See id.* at 24-25.

[635] *See* MCI Comments at 6.

[636] AT&T DeYoung/Henson/Willard Decl. Ex. 1. *See generally SBC Michigan II Order* at paras. 148-49.

provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.[637] Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[638] Based on our review of the record, we conclude, as did the state commissions,[639] that SBC offers nondiscriminatory access to its directory assistance services and operator services (OS/DA).[640]

B. Checklist Item 10 – Databases and Signaling

157. Section 271(c)(2)(B)(x) of the Act requires a BOC to provide to other telecommunications carriers "nondiscriminatory access to databases and associated signaling necessary for call routing and completion."[641] Based on the evidence in the record, we find, as did the state commissions,[642] that SBC provides nondiscriminatory access to databases and signaling networks in their respective states.[643]

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[637] 47 U.S.C. § 271(c)(2)(B)(vii)(II)-(III). *See also Bell Atlantic New York Order*, 15 FCC Rcd at 4131, para. 351.

[638] 47 U.S.C. § 251(b)(3). We have previously held that a BOC must be in compliance with section 251(b)(3) in order to satisfy sections 271(c)(2)(B)(vii)(II) and (III). *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740 n.763. *See also Bell Atlantic New York Order*, 15 FCC Rcd at 4132-33, para. 352.

[639] *See* Illinois Commission Comments at 109-10; Indiana Commission Comments at 121-22 (finding that SBC provided OS and DA services at TELRIC rates), 171 (deferring to this Commission analysis of commercial performance results regarding OS/DA); Ohio Commission Comments at 231; *Wisconsin Commission Phase I Order* at 14, 26-27.

[640] *See* SBC Ehr Illinois Aff. at paras. 148-53; SBC Ehr Indiana Aff. at paras. 129-33; SBC Ehr Ohio Aff. at paras. 134-38; SBC Ehr Wisconsin Aff. at paras. 130-36. We note that NALA appears to raise the same argument as it raised in the *SBC Michigan II* proceeding regarding branding fees. NALA argues that SBC requires competitive LECs to pay one-time branding fees to access its OS/DA services in violation of the Commission's requirements. NALA Sept. 11 *Ex Parte* Letter at 3. SBC submitted the same evidence it submitted in the *SBC Michigan II* proceeding demonstrating that SBC does allow competitive LECs to default to SBC branding, and that carriers choosing SBC branding are not subject to the non-recurring loading charges applied to carriers electing their own branding. *See* SBC Sept. 22 *Ex Parte* Letter, Attach. B, at 1-2. Accordingly, for the same reasons we rejected NALA's claims in the SBC Michigan II proceeding, we reject them here as well. *See SBC Michigan II Order* at para. 152.

[641] 47 U.S.C. § 271(c)(2)(B)(x).

[642] Illinois Commission Comments at 123; Indiana Commission Comments at 135; Ohio Commission Comments at 232; *Wisconsin Commission Phase I Order* at 28.

[643] SBC Application at 114-115; SBC Deere Illinois Aff. at paras. 170-210; SBC Deere Indiana Aff. at paras. 170-210; SBC Deere Ohio Aff. at paras. 175-215; SBC Deere Wisconsin Aff. at paras. 170-210.

158. TSI argues that SBC is violating checklist item ten.[644] Specifically, TSI claims that it should be able to purchase signaling from SBC as an unbundled network element at TELRIC rates, rather than from tariffs at higher rates.[645] Pursuant to section 271(c)(2)(B) of the Act, SBC only is required to make checklist items available to other telecommunications carriers.[646] TSI, however, is not a telecommunications carrier.[647] Therefore, we find that SBC has no obligation under the Act to provide signaling services to TSI at UNE rates.[648] Accordingly, TSI's allegations are not relevant to our finding of checklist compliance.[649]

C. Checklist Item 13 – Reciprocal Compensation

159. Section 271(c)(2)(B)(xiii) of the Act requires BOCs to enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."[650] In turn, section 252(d)(2)(A) specifies the conditions necessary for a state commission to find that the terms and conditions for reciprocal compensation are just and reasonable.[651] We conclude that AT&T raises a pricing issue that it has already appropriately raised before the federal court, as Congress intended, where it is pending resolution. Under these circumstances, we do not find a violation of checklist item thirteen.

160. Reciprocal compensation generally applies in the situation where two carriers combine to complete a local call, and the carrier that originates the traffic pays the terminating carrier for completing the call.[652] AT&T contends that the state commission misapplied a

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[644] Letter from David J. Robinson, TSI, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1-2 (filed July 21, 2003)(TSI July 21 *Ex Parte* Letter). We note that TSI raised identical allegations against Michigan Bell, which the Commission rejected. *See SBC Michigan II Order* at para. 160.

[645] TSI July 21 *Ex Parte* Letter at 1-2.

[646] 47 U.S.C. § 271(c)(2)(B).

[647] TSI is a third-party provider offering signaling services to telecommunications carriers. TSI July 21 *Ex Parte* Letter at 2.

[648] *See Verizon DC/MD/WVA Order*, 18 FCC Rcd at 5294, para. 139; *SBC Michigan II Order* at para. 160.

[649] TSI also argues that SBC fails to provide billing detail necessary for TSI to "determine accurate signaling message counts and proper jurisdictional billing treatment associated with those calls." TSI July 21 *Ex Parte* Letter at 2. We note that TSI provides no details regarding its complaint and thus, consistent with prior section 271 orders, we do not find that its claim overcomes SBC's affirmative showing of checklist compliance. *See Verizon DC/MD/WVA Order*, 18 FCC Rcd at 5225, para. 24 ("[W]e give little, if any, weight to allegations in a section 271 proceeding without the minimum amount of detail necessary for us to determine whether the applicant fails the checklist."). Furthermore, TSI is not a telecommunications carrier so we do not review SBC's performance in providing bills to TSI under section 271. 47 U.S.C. § 271(c)(2)(B).

[650] 47 U.S.C. § 271(c)(2)(B)(xiii).

[651] 47 U.S.C. § 252(d)(2)(A).

[652] *Local Competition Order*, 11 FCC Rcd at 496, para. 1034.

Commission rule regarding reciprocal compensation rates in an arbitration proceeding.[653] AT&T disputes the Ohio Commission's decision requiring AT&T to charge the lower, end-office rate when the AT&T tandem-equivalent switch connects with an SBC end office.[654] AT&T asserts that the state commission's arbitration proceeding determined that AT&T's switch will serve an area geographically comparable to the incumbent LEC's tandem switch, and therefore, the Commission's rules provide that the appropriate rate for traffic terminated to AT&T's tandem-equivalent switch in all cases is the incumbent LEC's tandem interconnection rate.[655] AT&T on May 23, 2003, appealed the state commission arbitration order to the U.S. District Court for the Southern District of Ohio, seeking declaratory and injunctive relief.[656] AT&T also argues that the Ohio Commission allowed MCI to collect the tandem rate once MCI established that its switches met the geographic comparability test in an arbitration of an MCI/SBC interconnection agreement, and "[t]here is no basis to treat AT&T's switches under a different legal standard."[657]

161. SBC responds that the contract language AT&T attacks is irrelevant to this proceeding.[658] SBC asserts that it does not rely on the AT&T agreement for checklist compliance but instead, relies on its interconnection agreement with Ohiotelnet.com that mirrors relevant language in section 51.711 of the Commission's rules which no party disputes as satisfying the rule's requirements.[659] Additionally, SBC argues that the Ohio Commission has consistently applied section 51.711 of the Commission's rules as demonstrated by a previous arbitration decision between other parties.[660] Noting AT&T's recently filed appeal, SBC has filed a counterclaim with the district court and believes that "AT&T failed to demonstrate before the

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[653] AT&T Comments 54-57 (citing 47 C.F.R. § 51.711; *AT&T Communications of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio,* Arbitration Award, Case No. 00-1188-TP-ARB (Ohio Commission June 21, 2001) (*Ohio Commission Reciprocal Compensation Order*); *AT&T Communications of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio,* Entry on Rehearing, Case No. 00-1188-TP-ARB (Ohio Commission Oct. 16, 2001) (*Ohio Commission Reciprocal Compensation Rehearing Order*)).

[654] AT&T Comments at 54.

[655] AT&T Comments at 54-55 (citing 47 C.F.R. § 51.711(a)(3); *Local Competition Order*, 11 FCC Rcd at 526-27, para. 1090; *Ohio Commission Reciprocal Compensation Order*; *Ohio Commission Reciprocal Compensation Rehearing Order*).

[656] *AT&T Communications of Ohio, Inc. v. Ohio Bell Telephone Company, et al,* Complaint, Case No. C2-03-472, (filed S.D. Ohio, May 23, 2003).

[657] AT&T Comments at 57. SBC asserts that AT&T's reliance on this 1997 arbitration between SBC Ohio and MCI is misplaced for several reasons. SBC Alexander Reply Aff. at para. 59 n.35. In any event, it would not change our conclusion that AT&T's dispute is now before the district court, the appropriate forum for resolving it.

[658] SBC Reply at 67.

[659] SBC Reply at 67.

[660] SBC Alexander Reply Aff. at para. 59 n.35.

PUCO [Ohio Commission] that AT&T's switches satisfy the geographic area test as defined by the Commission's rules and controlling precedent."[661]

162. As an initial matter, we note that no parties raised reciprocal compensation issues in the state 271 proceeding.[662] The Ohio Commission found compliance with checklist item thirteen, stating "that SBC Ohio has provided reciprocal compensation arrangements pursuant to . . . TELRIC-based rates approved in June 1999."[663] As noted above, the dispute that AT&T now raises is presently before the District Court. The Commission has continually instructed that the 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.[664] Thus, AT&T's contentions are no basis for finding that SBC does not meet the requirements of checklist item thirteen.

163. In an *ex parte* filing, TSI alleges that SBC's intrastate SS7 rate structure violates applicable reciprocal compensation rules and policies.[665] We note that TSI raised the identical issue in the *SBC Michigan II* proceeding. As we concluded in that Order,[666] we find that disputes regarding SBC's reciprocal compensation rate structure are best resolved before the state commissions or, to the extent TSI alleges a violation of federal rules, through a complaint brought to this Commission in the context of a section 208 proceeding.

D. Remaining Checklist Items (3, 5, 6, 8, 9, 11, 12, and 14)

164. In addition to showing that it is in compliance with the requirements discussed above, an applicant under section 271 must demonstrate that it complies with checklist item three (access to poles, ducts, and conduits),[667] item five (unbundled transport),[668] item six (unbundled

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[661] SBC Alexander Reply Aff. at para. 59. SBC contends that "numerous courts have recognized that the so-called 'geographic use' test created by [47 C.F.R. § 51.711(a)(3)] requires the CLEC to demonstrate, at a minimum, that its switch *actually* serves an area comparable to that of the ILEC tandem, not that it conceivably could do so." (emphasis in original). SBC Reply at 68-69.

[662] Ohio Commission 271 Order at 226-27.

[663] Ohio Commission 271 Order at 227.

[664] *SWBT Texas Order*, 15 FCC Rcd at 18394, 18541, paras. 88, 383 (citing 47 U.S.C. §§ 252(c), (e)(6); *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)). "[F]ederal courts must be presumed to apply the law correctly . . . ." *SWBT Texas Order*, 15 FCC Rcd at 18475, para. 237.

[665] TSI July 21 *Ex Parte* Letter at 2.

[666] *See SBC Michigan II Order* at para. 167.

[667] 47 U.S.C. § 271(c)(2)(B)(iii).

[668] 47 U.S.C. § 271(c)(2)(B)(v).

switching),[669] item eight (white pages),[670] item nine (numbering administration),[671] item eleven (number portability),[672] item twelve (dialing parity),[673] and item fourteen (resale).[674] No parties object to SBC's compliance with these checklist items. Based on the evidence in the record,[675] we conclude, as did the state commissions,[676] that SBC demonstrates that it is in compliance with these checklist items.

VI. SECTION 272 COMPLIANCE

165. Section 271(d)(3)(B) provides that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."[677] Based on the record, we conclude that SBC has demonstrated that it will comply with the requirements of section 272.[678] Significantly, SBC provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Illinois, Indiana, Ohio, and Wisconsin as it does

[669] 47 U.S.C. § 271(c)(2)(B)(vi).

[670] 47 U.S.C. § 271(c)(2)(B)(viii).

[671] 47 U.S.C. § 271(c)(2)(B)(ix).

[672] 47 U.S.C. § 271(c)(2)(B)(xi).

[673] 47 U.S.C. § 271(c)(2)(B)(xii).

[674] 47 U.S.C. § 271(c)(2)(B)(xiv).

[675] *See* SBC Application at 88-91 (checklist item 3), 104-06 (checklist item 5), 107-08 (checklist item 6), 112-13 (checklist item 8), 113-15 (checklist item 9), 115-17 (checklist item 11), 117-18 (checklist item 12), 120-22 (checklist item 14).

[676] We note that the Illinois Commission, the Ohio Commission, and the Wisconsin Commission also concluded that SBC is in compliance with these checklist items. *See* Illinois Commission Comments at 82 (checklist item 3), 98 (checklist item 5), 102 (checklist item 6), 114 (checklist item 8), 116 (checklist item 9), 126 (checklist item 11), 127 ~~(checklist item 12), and 143-44 (checklist item 14);~~ ~~*Ohio Commission 271 Order* at 175 (checklist item 3),~~ 207 (checklist item 5), 218 (checklist item 6), 240 (checklist item 8), 241 (checklist item 9), 255 (checklist item 11), 257 (checklist item 12), and 270 (checklist item 14); *Wisconsin Commission Phase I Order* at 129 (checklist item 3), 183-84 (checklist item 5), 197-202 (checklist item 6), 221 (checklist item 8), 223 (checklist item 9), 237 (checklist item 11), 239 (checklist item 12), and 251-52 (checklist item 14). The Indiana Commission, while generally finding that SBC was in compliance with these checklist items, deferred the determination as to whether SBC met the nondiscrimination and "meaningful opportunity to compete" standards to the Commission. *See* Indiana Commission Comments at 78, 168 (checklist item 3), 107, 170 (checklist item 5), 113, 170 (checklist item 6), 125, 171-72 (checklist item 8), 127, 172 (checklist item 9), 137, 173 (checklist item 11), 138, 174 (checklist item 12), and 143, 174-75 (checklist item 14).

[677] 47 U. S.C. § 271(d)(3)(B); App. F at paras. 68-69.

[678] *See* SBC Application at 138-144; SBC Application App. A, Vol. 1, Tab 9, Affidavit of Joe Carrisalez (SBC Carrisalez Aff.); SBC Application App. A, Vol. 3, Tab 17, Affidavit of Timothy Dominak (SBC Dominak Aff.); SBC Application App. A, Vol. 11, Tab 42, Affidavit of Linda G. Yohe (SBC Yohe Aff.).

in Texas, Kansas, Oklahoma, Missouri, Arkansas, California, and Michigan – states for which SBC has already received section 271 authority.[679] No party challenges SBC's section 272 showing.[680]

VII. PUBLIC INTEREST ANALYSIS

A. Public Interest Test

166. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.[681] At the same time, section 271(d)(4) of the Act states that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."[682] Accordingly, although the Commission must make a separate determination that approval of a section 271 application is "consistent with the public interest, convenience, and necessity," it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B). Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.

167. We conclude that approval of this application is consistent with the public interest. After extensive review of the competitive checklist, we find that barriers to competitive entry into the local exchange markets of the four applicant states have been removed, and that these local exchange markets are open to competition. As set forth below, SBC's performance plans provide assurance of future compliance.[683]

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[679] *See* SBC Carrisalez Aff. at para. 5; SBC Yohe Aff. at para. 6. *See also SBC Michigan II Order* at para. 170; *SBC California Order*, 17 FCC Rcd at 25731-33, paras. 145-46; *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20780-81, paras. 122-23; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6370-74, paras. 256-65; *SWBT Texas Order*, 15 FCC Rcd at 18548-57, paras. 394-415.

[680] Ernst & Young has completed the first independent audit of SBC's section 272 compliance pursuant to section 53.209 of the Commission's rules. 47 C.F.R. § 53.209. *See* Letter from Brian Horst, Partner, Ernst & Young, to Marlene H. Dortch, Secretary, Federal Communication Commission (Sept. 16, 2002)(transmitting audit report). Only Texas, Kansas, and Oklahoma were included in the first SBC biennial audit.

[681] 47 U.S.C. § 271(d)(3)(C).

[682] 47 U.S.C. § 271(d)(4).

[683] We also reject three miscellaneous "public interest" issues raised by commenters. We find that these issues are more appropriately addressed as checklist issues, and having determined that SBC has satisfied the relevant checklist items, we conclude that the parties have submitted no additional evidence to suggest that SBC's application fails the public interest test. First, ACN Group complains that SBC's refusal to unbundle IDLC and NGDLC loops and the associated packet switching facilities at TELRIC rates warrants rejection of this application. As we state above, this (continued....)

B. Assurance of Future Performance

168. We find that the performance remedy plans currently in place in the four applicant states provide assurance that local markets will remain open after SBC receives section 271 authorization. Although it is not a requirement for section 271 approval that a BOC be subject to such post-entry performance assurance mechanisms, the Commission has previously found that the existence of a satisfactory performance monitoring and enforcement mechanism constitutes probative evidence that the BOC will continue to meet its section 271 obligations.[684]

169. We conclude that the SBC performance plans provide sufficient incentives to foster post-entry checklist compliance. As in prior section 271 orders, our conclusions are based on a review of several key elements: total liability at risk in the plan, performance measurement and standards definitions, structure of the plan, self-executing nature of remedies, data validation and audit procedures in the plan, and accounting requirements.[685] We discuss the four states' plans, and address the criticisms directed at each, in turn. We note at the outset, though, that the remedy plans in place in these states are not the only means of ensuring that SBC continues to provide nondiscriminatory service to competing carriers. In addition to the monetary payments at stake under the plans, any SBC failure to sustain an acceptable level of service to competing carriers may trigger enforcement provisions in interconnection agreements, federal enforcement

(Continued from previous page)
issue is more appropriately addressed in our discussion of SBC's compliance with checklist item 4, which requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services." 47 U.S.C. § 271(c)(2)(B)(iv). Accordingly, we discuss ACN Group's claim above, in Part IV.C.

Second, several parties cite SBC's legal and regulatory efforts to raise UNE prices and curtail the availability of UNE-P as grounds for holding that approval of its application would be contrary to the public interest. *See* OCC Comments at 4 (arguing that SBC is attempting "to thwart competition by undermining the UNE-P," principally by working to increase TELRIC rates and to remove local circuit switching from the list of elements it must provide to competitors on an unbundled basis pursuant to section 251(c)); ACN Group Comments at 54-56 (citing SBC's efforts to increase UNE-P rates through legislative activities in Illinois); IUCC Comments at 15-17 (arguing that SBC's outstanding legal appeals challenging the Indiana Commission's orders regarding UNE pricing impede competition in that state). We reject these arguments, which are premised on the erroneous assumption that SBC should be penalized simply for exercising its entitlement to engage in advocacy before courts, legislatures, and regulatory bodies.

Third, Globalcom raises a "public interest" argument regarding SBC's billing for EELs. *See* Globalcom Comments at 23-24. We address and reject this argument above, in our discussion of SBC's UNE pricing. *See supra* Part IV.B.1.

[684] *See, e.g., Verizon New Jersey Order*, 17 FCC Rcd at 12362, para. 176; *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98. We note that in all of the previous applications that the Commission has granted to date, the applicant was subject to a performance assurance plan designed to protect against backsliding after BOC entry into the long distance market.

[685] *See, e.g., Verizon Massachusetts Order*, 16 FCC Rcd at 9121-24, paras. 240-247; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6378-81, paras. 273-80.

action pursuant to section 271(d)(6), and other legal actions.[686] We consider the specific plans against the backdrop of these additional assurances of future compliance.

170. *Illinois.* The Illinois Commission approved the remedy plan currently in place in its order recommending approval of SBC's section 271 application.[687] This plan places at least 36 percent of SBC's statewide annual net return from local exchange service at risk in a given year, and 1/12th that amount, or 3 percent, in a given month.[688] This level of liability is consistent with that of remedy plans in other states for which this Commission has granted section 271 authority.[689] Moreover, the Illinois plan includes self-executing penalties,[690] which are keyed to performance metrics substantially identical to those the Commission considered, and approved, in the context of SBC's section 271 application for Texas.[691] Finally, in its consultative report to this Commission, the Illinois Commission concluded that the plan, "along with other oversight and enforcement authority of the [Illinois Commission] and the FCC," would help ensure that SBC continues to comply with its checklist obligations post-entry.[692] Based on the features described above, we agree.

171. AT&T and MCI complain that the Illinois plan is deficient because any modifications require SBC's consent.[693] We disagree. The Illinois plan expressly accords competitive LECs the option to "participate with SBC Illinois, other CLECs, and [Illinois Commission] representatives to review the performance measures to determine (a) whether measurements should be added, deleted, or modified; (b) whether the applicable benchmark standards should be modified or replaced by parity standards, or vice versa; and (c) whether to move a classification of a measure . . . from Remedied to Diagnostic, or vice versa." Although "[a]ny changes to existing performance measures and this remedy plan shall be by mutual

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[686] *Qwest Minnesota Order*, 18 FCC Rcd at 13362, para. 72; *Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430 (stating that the BOC "risks liability through antitrust and other private causes of action if it performs in an unlawfully discriminatory manner"); *see also SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421.

[687] *See, e.g.*, SBC Johnson Aff. at para. 39.

[688] If it appears that these caps will be exceeded, SBC may request a hearing before the Illinois Commission. In such cases, "SBC Illinois will have the burden of proof to demonstrate why, under the circumstances, it should not be required to pay liquidated damages in excess of the applicable threshold amount." SBC Ehr Illinois Aff. at Attach. A § 7.5.

[689] *See, e g., Qwest Minnesota Order*, 18 FCC Rcd at 13361, para. 71 & n.263; *Verizon Massachusetts Order*, 16 FCC Rcd at 9121, para. 241 & n. 769; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6378 para. 274 & n.837; *SWBT Texas Order*, 15 FCC Rcd at 18561-62, para. 424 & n.1235; *Bell Atlantic New York Order*, 15 FCC Rcd at 4168, para. 436 & n.1332.

[690] *See* SBC Ehr Illinois Aff. at para. 218.

[691] *See* SBC Johnson Aff. at para. 36.

[692] Illinois Commission Comments at 160.

[693] *See* AT&T Comments at 86; MCI Comments at 13.

agreement of the parties and approval of the Commission," the plan states plainly that any disputes "regarding changes, additions and/or deletions to the performance measurements . . . shall be referred to the [Illinois Commission] for resolution."[694] Thus, contrary to the commenters' claims, the Illinois Commission is empowered to add, remove, or modify performance metrics without SBC's consent.

172. *Indiana.* The remedy plan in place in Indiana was initially approved for use in an interconnection agreement between SBC and Time Warner.[695] After a federal district court struck down a previous plan imposed by the Indiana Commission, SBC agreed to make the Time Warner plan available on a nondiscriminatory basis to any competitive LEC and to implement several other modifications to that plan.[696] As in Illinois, the plan places at least 36 percent of SBC's statewide annual net return from local exchange service at risk in a given year, and 1/12th that amount, or 3 percent, in a given month.[697] As explained above, this level of liability is consistent with that of remedy plans in other states for which this Commission has granted section 271 authority.[698] Moreover, the Indiana plan includes self-executing penalties,[699] which are keyed to performance metrics based on those the Commission considered, and approved, in the context of SBC's section 271 application for Texas.[700] The Indiana Commission has concluded that, as modified, the plan "is adequate to satisfy the FCC's requirements for a post-approval 'performance assurance plan' in the context of Section 271," subject to specific concerns that we address below.[701] Based on the features described above, we agree that the plan, in conjunction with state and federal enforcement mechanisms, will help ensure that SBC continues to meet its checklist obligations after receiving section 271 authority.

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[694] *See* SBC Ehr Illinois Aff., Attach A at § 6.4. Moreover, as SBC states, a competitive LEC or the state commission could request modification through means other than those expressly set forth in the plan, though such attempts might face resistance from SBC. *See* SBC Ehr Reply Aff. at para. 34.

[695] *See* SBC Application at 134.

[696] *See, e.g.*, Indiana Commission Comments at 187-88 (citing *Indiana Bell Telephone Company, Inc. v. Indiana Utility Regulatory Commission*, 2003 WL 1903363 (S.D. Ind. Mar. 11, 2003) (*Indiana Bell v. Indiana Commission*)).

[697] SBC Ehr Indiana Aff. at para. 176. As in Illinois, if it appears that these caps will be exceeded, SBC may request a hearing before the state commission. In such cases, SBC "will have the burden of proof to demonstrate why, under the circumstances, it should not be required to pay liquidated damages in excess of the applicable threshold amount." SBC Ehr Indiana Aff., Attach. A at § 7.5.

[698] *See supra* para. 170 & note 689.

[699] SBC Ehr Indiana Aff. at para. 191.

[700] *Id.* at paras. 13-18.

[701] *See* Indiana Commission Comments at 200.

173. The Indiana Commission expresses concern that pursuant to a recent federal district court order, it may lack authority to enforce SBC's remedy plan.[702] We disagree. *Indiana Bell v. Indiana Commission* overturned a specific remedy plan that the Indiana Commission had required SBC to adopt in late 2002.[703] The court recognized that state commissions are empowered to impose remedy plans pursuant to section 252, but determined that the Indiana Commission was *not* permitted to do so pursuant to section 271, which accords state commissions a purely "advisory" role. Believing that the Indiana Commission had attempted to impose the plan at issue under authority purportedly granted by section 271, the court enjoined enforcement of the plan.[704] As described above, however, the plan on which we base our decision was *not* imposed by the Indiana Commission, but rather voluntarily adopted by SBC. The only question relevant here is a question that the district court did not address, much less resolve: whether the Indiana Commission has the authority to enforce a plan that SBC voluntarily has made available to competitive LECs for insertion into their interconnection agreements. As numerous federal courts have made clear, section 252 grants this authority.[705] Furthermore, we note that even if the Indiana Commission were unwilling or unable to exercise jurisdiction to enforce the remedy plan, this Commission may have the authority to act in its place pursuant to section 252(e).[706] We are thus persuaded that the Indiana plan is capable of being enforced in a manner adequate to prevent backsliding post-entry.

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[702] *See* Indiana Commission Comments at 197-99 (citing *Indiana Bell v. Indiana Commission*).

[703] *See id.*; *see also* SBC Application at 134.

[704] *See Indiana Bell v. Indiana Commission*. Because the court limited its inquiry to the Indiana Commission's authority under section 271, and acknowledged that state commissions have been permitted to impose penalty plans pursuant to the Act's local competition provisions, there is nothing preventing competitive LECs in Indiana from seeking imposition of a penalty plan pursuant to the section 252 arbitration process.

[705] *See, e.g., BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., Inc.*, 317 F.3d 1270, 1276-77 (11th Cir. 2003) ("[I]n granting to the public service commissions the power to approve or reject interconnection agreements, Congress intended to include the power to interpret and enforce in the first instance."); *S.W. Bell Tel. Co. v. Brooks Fiber Communications of Okla., Inc.*, 235 F.3d 493, 497 (10th Cir. 2000) (finding that state commission's authority "to approve or reject and mediate or arbitrate interconnection agreements necessarily implies the authority to interpret and enforce specific provisions contained in those agreements"); *S.W. Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000) (finding that section 252's "grant of power to state commissions necessarily includes the power to enforce the interconnection agreement"); *MCI Telecomms. v. Ill. Bell Tel. Co.*, 222 F.3d 323, 337-38 (7th Cir. 2000) ("A state commission's authority to approve or reject interconnection agreements under the Act necessarily includes the authority to interpret and enforce, to the same extent, the terms of those agreements once they have been approved by that commission."); *S.W. Bell Tel. Co. v. Pub. Util. Com'n of Tex.*, 208 F.3d 475, 479-80 (5th Cir. 2000) ("[T]he Act's grant to the state commissions of plenary authority to approve or disapprove these interconnection agreements necessarily carries with it the authority to interpret and enforce the provisions of agreements that state commissions have approved.").

[706] *See, e.g., SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20784-85, para. 131 ("We note that the Arkansas Commission has repeatedly held that it has jurisdiction to adjudicate complaints against SWBT for alleged violations of interconnection agreements. Furthermore, we note that if the Arkansas Commission were to decline to exercise jurisdiction, this Commission may have the authority to act in its place pursuant to section 252(e). The Commission has previously held that failure of a state commission to carry out its responsibilities, including the resolution of (continued....)

174. *Ohio.* In approving the SBC/Ameritech merger, the Ohio Commission required SBC to implement the performance measures and remedy plan that this Commission approved in its *SWBT Texas Order*.[707] Pursuant to collaborative discussions including Ohio Commission staff, industry participants and other interested parties, SBC has modified the applicable performance metrics to render them more specific to Ohio.[708] Like the plans discussed above, the Ohio plan places at least 36 percent of SBC's statewide annual net return from local exchange service at risk in a given year – a level consistent with that of remedy plans in other states for which this Commission has granted section 271 authority.[709] Moreover, the Ohio plan includes self-executing penalties,[710] which are keyed to performance metrics substantially identical to those the Commission considered, and approved, in the context of SBC's section 271 application for Texas.[711] Further, notwithstanding modification of the performance measures, the plan retains the basic structure of the Texas Remedy Plan. Finally, the Ohio Commission has determined that this plan is adequate for purposes of section 271.[712] Based on the features described above, we agree.

175. AT&T complains that the current Ohio plan is deficient because any modifications require SBC's consent. Here, as with regard to the Illinois plan, we disagree. The Ohio plan accords competitive LECs an opportunity to "participate with Ameritech, other CLECs, and [Ohio Commission] representatives to review the performance measures to determine whether measurements should be added, deleted or modified," and whether existing standards should be "modified or replaced." Modifications require SBC's consent, but the plan states plainly that disputes regarding new measures and their appropriate classification are subject to arbitration.[713] Thus, contrary to the commenters' claims, performance measures may be added or modified notwithstanding SBC's objection.

(*Continued from previous page*)
disputes arising from the interpretation and enforcement of interconnection agreements, may result in this Commission's preemption of state commission jurisdiction under section 252(e)(5).").

[707] *See* SBC Application at 135; SBC McKenzie Aff. at para. 40.

[708] *See, e.g.*, SBC McKenzie Aff. at para. 40; Ohio Commission Comments at 287-88.

[709] *See supra* para. 170 & note 689. We therefore reject OCC's claim that the remedies set forth in the Ohio plan are insufficient. *See* OCC Comments at 10.

[710] *See* SBC Ehr Ohio Aff. at para. 198.

[711] SBC McKenzie Aff. at para. 40. As explained below, SBC and competitive LECs have continued to collaborate on the development of performance measures through six-month collaboratives, rendering the measures more specific to Ohio systems and processes. *See infra* para. 176.

[712] Ohio Commission Comments at 287.

[713] *See* SBC Ehr Ohio Aff., Attach. A at § 6.4. As in Illinois, a competitive LEC or the state commission could also request modification through means other than those expressly set forth in the plan. *See* SBC Ehr Reply Aff. at para. 34.

176. AT&T and MCI both complain that the Ohio plan is not sufficiently state-specific.[714] We disagree. The Commission repeatedly has approved applications in which the performance plan at issue was based on a plan originally developed for a different state.[715] Indeed, the Commission expressly has endorsed the use of one state's plan in another state.[716] Further, notwithstanding AT&T's and MCI's contention that the Ohio plan simply mirrors the Texas plan, the Ohio Commission explains that "the measurements have continued to be updated pursuant to the Ohio-specific collaborative process that has been ongoing over the past couple of years."[717] For these reasons, we do not agree that the current plan is deficient.

177. AT&T also contends that the Ohio plan is faulty because it did not result from a collaborative process involving competitive LECs.[718] We disagree. SBC points out that in the course of considering SBC's section 271 application, the Ohio Commission in fact held a workshop, the last day of which was devoted to public interest concerns. AT&T participated in that workshop, and specifically addressed the remedy plan issue.[719] Moreover, while we believe that competitive LEC participation in the development of a remedy plan might sometimes result in a more demanding plan, what ultimately matters most is the plan's content – its structure, the penalties it imposes, the nature of the performance measures, and so forth – rather than the details of its development.[720] Thus, we do not believe that the extent of competitive LECs' participation in the Ohio plan's development constitutes an independent basis on which to find that plan inadequate for section 271 purposes.

178. *Wisconsin.* SBC developed the remedy plan currently available to competitive LECs in Wisconsin during its interconnection negotiations with TDS Metrocom and Time Warner in late 2002.[721] The Wisconsin Commission approved the interconnection agreement

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[714] *See* AT&T Comments at 87; MCI Comments at 14.

[715] *See, e.g., Qwest Minnesota Order,* 18 FCC Rcd at 13361, para. 70 (evaluating plan based Colorado plan); *Qwest Three State Order*, 18 FCC Rcd at 7394, para. 120 (evaluating plans modeled on Texas plan); *Verizon DC/MD/WVA Order*, 18 FCC Rcd at 5310, para. 16 (noting that "the New York and Virginia PAPs form the bases for the PAPs in the application states"); *SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20784, para. 129 (noting that plans at issue were based on Texas plan).

[716] *See SWBT Arkansas/Missouri Order*, 16 FCC Rcd at 20783, para. 128 ("While we do not require that one state commission adopt or use another state's plan, we recognize the efficiency gained by all involved state commissions, SWBT and competing carriers from working together to develop and monitor common performance measures and similar remedy plans.").

[717] Ohio Commission Comments at 287. *See also* SBC McKenzie Aff. at para. 40.

[718] *See* AT&T Comments at 87-88.

[719] *See* SBC Ehr Reply Aff. at para. 46.

[720] *See supra* para. 169 & note 685 (setting forth relevant factors in Commission's evaluation of performance plans).

[721] *See* SBC Application at 137.

amendments incorporating the compromise plan in January 2003.[722] Like the plans discussed above, the Wisconsin plan places at least 36 percent of SBC's statewide annual net return from local exchange service at risk in a given year[723] – a level consistent with that of remedy plans in other states for which this Commission has granted section 271 authority.[724] The Wisconsin plan includes self-executing penalties,[725] which are keyed to performance metrics substantially identical to those the Commission considered, and approved, in the context of SBC's section 271 application for Texas.[726] The plan, moreover, retains the basic structure of the Texas Remedy Plan.[727] Based on the features described above, we believe that the Wisconsin plan, in conjunction with state and federal enforcement, will help ensure that SBC continues to comply with its checklist obligations post-entry.[728]

179. AT&T and MCI complain that the Wisconsin plan is deficient because any modifications require SBC's consent.[729] We disagree. As in Illinois and Ohio, the Wisconsin plan accords competitive LECs an entitlement to meet, every six months, with SBC, other competitive LECs, and state commission representatives to review the performance measures. Modifications require the consent of the parties and the Wisconsin Commission, but "[s]hould disputes occur regarding changes, additions and/or deletions to the performance measurements,

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[722] *See id.*; *see also* SBC Application App. B-WI, Tab 13, Wisconsin Bell Interconnection Agreement Under Section 251/252 of the Telecommunications Act of 1996.

[723] SBC Ehr Wisconsin Aff. at para. 180.

[724] *See supra* para. 170 & note 689. As in Illinois and Indiana, if it appears that these caps will be exceeded, SBC may request a hearing before the state commission. In such cases, SBC "will have the burden of proof to demonstrate why, under the circumstances, it should not be required to pay liquidated damages in excess of the applicable threshold amount." SBC Ehr Wisconsin Aff., Attach. A at § 7.5. Given that the overall potential liability is in line with the potential liability imposed by plans the Commission has deemed adequate before, we reject MCI's claim that the Wisconsin plan imposes insufficient penalties. *See* MCI Comments at 13.

[725] SBC Ehr Wisconsin Aff. at para. 195.

[726] SBC Vandersanden Aff. at para. 34. SBC and competitive LECs have continued to collaborate on the development of performance measures through six-month collaboratives. *See id.* at para. 35.

[727] *Id* at para. 40.

[728] The Wisconsin Commission, which supports an alternative plan that was overturned by a state court but is still subject to ongoing judicial review, has declined to assess whether the current plan is sufficient for section 271 purposes. *See Wisconsin Commission Phase II Order* at 30. However, the Wisconsin Commission has noted that "the existence of remedy plans in interconnection agreements, the compliance and improvement plans embodied in the consent order, along with ongoing regulatory activity, will serve to prevent backsliding." *Id.* This conclusion is consistent with our determination that the Wisconsin plan, in conjunction with other enforcement mechanisms, will help ensure post-entry compliance.

[729] *See* AT&T Comments at 86; MCI Comments at 13.

the dispute shall be referred to the [Wisconsin Commission] for resolution."[730] Thus, contrary to the commenters' claims, the Wisconsin Commission is empowered to add, remove, or modify performance metrics without SBC's consent.

VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

180. Section 271(d)(6) of the Act requires SBC to continue to satisfy the "conditions required for . . . approval" of its section 271 application after the Commission approves its application.[731] Thus, the Commission has a responsibility not only to ensure that SBC is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.[732]

181. Working in concert with the state commissions, we intend to monitor closely SBC's post-approval compliance to ensure that SBC does not "cease[] to meet any of the conditions required for [section 271] approval."[733] We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in each of the four states. We are prepared to use our authority under section 271(d)(6) if evidence shows market opening conditions have not been maintained.

182. Consistent with prior section 271 orders, we require SBC to report to the Commission all carrier-to-carrier performance measure results and PRP reports for Illinois, Indiana, Ohio and Wisconsin beginning with the first full month after the effective date of this Order, and for each month thereafter for one year unless extended by the Commission. These results and reports will allow us to review, on an ongoing basis, SBC's performance to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to SBC's entry into the long distance market in Illinois, Indiana, Ohio and Wisconsin.[734]

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[730] SBC Ehr Wisconsin Aff., Attach. A at § 6.4. As in Illinois and Ohio, a competitive LEC or the state commission could also request modification through means other than those expressly set forth in the plan. *See* SBC Ehr Reply Aff. at para. 34.

[731] 47 U.S.C. § 271(d)(6).

[732] *See, e g., SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53.

[733] 47 U.S.C. § 271(d)(6)(A).

[734] *See, e.g., Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Order, 15 FCC Rcd 5413, 5413-23 (2000) (adopting consent decree between the Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of $3,000,000 to the United States Treasury, with additional payments if Bell Atlantic failed to meet specific performance standards and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).

IX. CONCLUSION

183. For the reasons discussed above, we grant SBC's application for authorization under section 271 of the Act to provide in-region, interLATA services in Illinois, Indiana, Ohio, and Wisconsin.

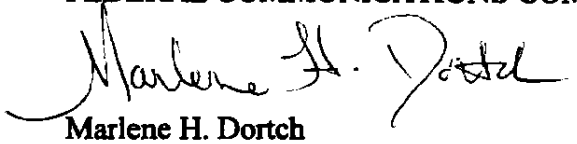
X. ORDERING CLAUSES

184. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, SBC's application to provide in-region, interLATA service in Illinois, Indiana, Ohio and Wisconsin, filed on July 17, 2003, IS GRANTED.

185. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 271, the Motion to Withdraw Certain Issues of AT&T, filed on October 2, 2003, IS GRANTED.

186. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE October 24, 2003.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary